University of Alberta

Understanding Labour Law Reform in Alberta: 1986-1988

By

Deborah J. Radcliffe ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Doctor of Philosophy

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Understanding Labour Law Reform in Alberta: 1986-1988

ABSTRACT

In the context of increased economic competitiveness and globalization there has been growing concern about the utility of Canada's existing labour law regime and considerable discussion about how this framework might be reformed. The tone of much of this research has been that legal change is a straight-forward, rational undertaking. In this dissertation my aim is to explore what has been overlooked in these debates: *how* labour law reform occurs in practice. To explore this question I have selected the legal review of Alberta labour legislation commissioned by the Tory government in 1986.

I review a number of theoretical frameworks on legal change—functionalism, pluralism and Marxism. While these approaches provide various insights into the law and legal change I argue that they are limited because they cannot adequately explain how specific clauses appear in a labour law statute. To understand why a legal text is written one way and not another I consider the issue of legal meaning. To be able to issue demands for change, constituencies must have some understanding of what the law means (e.g., how it is flawed). Meaning is shaped by narrative structures: the way that events and context are woven together to represent the social world.

Understandings of labour law are context-dependent. Narratives on the strike at Gainers Edmonton meat-packing plant in 1986 were critical in shaping public understandings of the Alberta *Labour Relations Act* (*LRA*) and how it was flawed. Such narratives also played a significant role in the Alberta government's decision to undertake a formal review of the province's labour legislation. Narratives on Gainers were also taken up in broader narratives on (labour and management) rights, the legitimacy of trade unions and collective bargaining, the economy and the role of government in labour relations. These understandings of the law set parameters for the formulation of demands for and against legal change. Later changes in context (e.g., the 1988 nurses' strike) focused attention on other aspects of the *LRA*. Competing understandings of the law gave rise to competing demands for legal change. By adopting some provisions and not others the government had privileged some understandings of the law while suppressing others. The study illustrates how the Alberta *Labour Relations Code*, enacted in 1988, reflected a mixture of influences and did not elaborate a single agenda for change. The narrative approach enhances other theoretical approaches by providing a means of understanding both the critical shifts in labour law and the nuances of legal change.

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I. Understanding Legal Change

A. Introduction

1. The Gainers Strike and Demands for Labour Law Reform in Alberta

In the summer of 1986 labour relations legislation became a focus of public discourse in Alberta. The Alberta *Labour Relations Act*[1] *(LRA)*, which had been in effect since 1980, was believed to be in need of urgent reform. There was no shortage of rhetoric to support this demand. There were charges that the *Act* was anachronistic—that it was more befitting an earlier, less civilized era in Canadian labour relations or the kind of law that one might find in nations with authoritarian regimes. The Canadian Labour Congress (CLC) contended that the *LRA* was "barbaric" (*Edmonton Journal* (*EJ*), June 4, 1986: A3). Ray Martin, Leader of Alberta's Official (New Democrat) Opposition, insisted that the law was "backward" and "embarrassing" and was not unlike the kind of labour legislation that existed in the American state of Alabama[2] (*EJ*, June 7, 1986; B5). There were also comparisons with legislation in Poland, Chile and Guatemala (*EJ*, June 7, 1986: B5).

Charges brought against the *LRA* coincided with controversy at the Edmonton Gainers meat packing plant, and a labour dispute that proved to be among the most volatile in Alberta's history. The now infamous Gainers strike began on June 1, 1986. Incidents of violence at Gainers picket lines were reported within hours of the strike deadline as the Company, in an effort to maintain business operations, attempted to transport replacement workers across the picket lines. In the days that followed the violence escalated. In a show of solidarity hundreds of supporters joined the striking pickets and helped block plant access to busloads of replacement workers. Gainers wasted little time in applying for injunctive relief; the first of two court orders was issued on June 2 limiting picketing to 42. The striking employees and their supporters defied the injunction but police and riot-equipped police were deployed to enforce the order. Dozens of pickets were subsequently arrested. The so called "war on 66th street"[3] was underway. The "battle" quickly drew local and national attention and became "nightly TV fare" (*Globe and Mail*, June 9, 1986: A5).

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[1] R.S.A. 1980, c. L-1.1.

[2] Alabama is one of a number of American states that has enacted "right to work" legislation.

The *LRA* was identified as a key factor in the turmoil surrounding Gainers. Labour and others attacked the law because it did not prohibit employers like Gainers from deploying strike replacements during a labour dispute. The employer's ability to lockout his/her workforce and then to offer employment to individual employees at reduced wages and benefits —a practice that had emerged in the construction industry and was known as the 25 hour lockout—was also identified as a problem. There were charges that the legality of these practices provided little incentive for employers to negotiate new agreements with trade unions. As a result workers risked losing their collective bargaining rights and perhaps even their status as employees. There was much at stake during a dispute such as Gainers. An *Edmonton Journal* editorial commented: "In Alberta every labor dispute that proceeds to a lockout or strike is a ticking time bomb of social unrest" (*EJ*, June 6, 1986: A6). Legal change was presented as a solution to such tensions.

Labour quickly used events at Gainers to mount a campaign for legal change, a campaign that received considerable public support. On June 7, 1986 a crowd of more than 3,000 marched to the Gainers plant to show their support for the striking workers and for legal change (*EJ*, June 8, 1986: A1). Several days later a crowd of 6,000 gathered at the Alberta Legislature to protest the *LRA* (*EJ*, June 13, 1986: A1). The second demonstration coincided with the Progressive Conservative (Tory) government's Speech from the Throne which set out the agenda for the new legislative session. Under intense pressure to respond to demands for change, the Tories added a statement to the end of the Speech indicating that a "full review" of Alberta's labour laws would be undertaken (*Alberta Hansard*, (*AH*), June 12, 1986: 7). Later in the summer the government launched the review by establishing the Labour Legislation Review Committee. The review process concluded two years later with the proclamation of the *Labour Relations Code*[4] *(LRC)* on November 28, 1988. In this dissertation I will examine the 1986-1988 legal review initiative in Alberta in order to better understand the changes that appeared in the 1988 *Code*.

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[3] This was based on the location of the Gainers plant.

[4] S.A. 1988, c. L-1.2.

2. Understanding Labour Law Reform

Research that attempts to understand how labour law is changed is especially timely given the recent interest in labour reform. In the 1980s and 1990s there has been growing concern in Canada and the United States about the efficacy of the existing system of labour relations (e.g., Riddell, 1986; Adams, 1993; Morden, 1994; Bellace, 1994; Kochan, Katz and McKersie 1986, Strauss 1995 and Gould, 1993). There is a sense that traditional labour relations practices are too adversarial and combative as well as overly legalistic, especially when compared to labour relations frameworks abroad such as in Japan. Interest in reforming labour law has also coincided with changes in the economy, such as growing concerns about business' ability to remain viable as international competition increases and as free trade arrangements exacerbate competitive pressures. There is a view that traditional collective bargaining will only produce confrontation and distrust between the parties, elements that are considered incompatible with the exigencies of the new economy. On these grounds there have been demands for both minor and fundamental legal changes.

Though there has been considerable interest in the faults of the existing system of labour relations and the merits of alternate approaches, there has been little regard in policy-oriented research on labour law for the way that legal change occurs in practice. It is as though the process of changing the law was largely unproblematic and that all we really need concern ourselves with is the policies themselves as their merits should be self-evident. The tone of much of this research suggests that policy-making is a highly rational and objective process that is conducted by law-makers who have an intrinsic awareness of what is best for labour, management and society more generally.

In this study I do not treat legal change as an unproblematic, predictable or objective process. Legal reform, especially the reform of legislation governing labour relations, is a political affair (see Townley, 1986). Labour reform is a process of struggle in which various constituencies, in a specific socio-historical setting, attempt to shape the law in particular ways. In this study my aim is to try to understand changes in legal content. How is it that certain statements or clauses appear in a labour relations statute at a given moment in time? I treat as problematic the ways that various constituencies are able to discern "problem clauses" in a legal text and how they are then able to construct legal proposals for change. In addressing these matters I am interested in the ways that certain social visions— ways of thinking about the social world— shape how we can conceive labour law and its faults and the ways that these give rise to specific demands for change. I am interested in the way that competing understandings of labour law get played out over time as well as how some proposals, and hence social visions, come to prevail over others. Then there is the question of how labour law reform becomes a part of a government's formal political agenda, an important precondition for the initiation of legal change.

I have stated that my central aim in studying legal change is to understand the appearance, or in some instances absence, of certain legal statements. Legal provisions are an expression of certain ideas "re"-presented in a particular discursive style. They appear to lack an identifiable author and therefore a point-of-view, features that reinforce the perception that the law is somehow autonomous, impartial and neutral, and detached from the social world (Bourdieu, 1987). There is a sense that legal processes are unsullied by social and political particularities and that the law develops according to some natural or immanent inner logic. There have been efforts to undermine this view. One of the aims of the recent critical legal studies (CLS) movement has been to expose the political dimension of law and to demonstrate its connectedness to the social (Kairys, 1990). In this study I will focus on the social nature of the legal clause. In public and political debate on law, constituencies draw on understandings of the social world to construct competing stories about what they believe to be wrong with a particular statute. In this thesis I examine how the ways that we are able to interpret legal provisions also shape the provisions that we believe will reform the law. In this dissertation I will illustrate the social nature of the legal statement by focusing on legal meaning and the way that such meanings are shaped and reshaped over time and in different contexts.

I introduced this chapter by providing a brief overview of the events that prompted a more than two year long review of Alberta's labour relations legislation beginning in 1986. I use this case of legal change in Alberta to explore the issues that I outlined above. My main objective is to account for the revisions that appeared in the Alberta *Labour Relations Code* (*LRC*) in 1988. I do so by tracing the ways that the existing law—the *Labour Relations Act*—and draft legislation introduced in 1987 (Bill 60) were interpreted during the two year period, and how these understandings gave rise to specific demands for legal change. I also consider how specific social conditions affected which proposals were adopted in the final legislation in 1988.

An interesting aspect of the Alberta labour review is the discrepancy between the legal problems that were identified in the context of the Gainers dispute and the changes that appeared in the *LRC* in 1988. A major concern raised during the Gainers dispute was the ability of employers to hire replacement labour during a labour dispute. The *LRC* did not address the issue of replacements, but it did introduce changes in such areas as union certification and decertification, unfair labour practices, third party intervention, picketing and strike action. This seemed curious to me, especially in light of the strong public support for the legal reforms that Gainers had brought into focus. Why was the issue of replacement labour not dealt with in any substantive way and how could the array of changes in other areas of the *Code* be accounted for? How, for instance, might we understand the inclusion of a provision authorizing Cabinet "to revoke the certification of a trade union that causes or participates" in an illegal strike (s. 114(a))?[5] These are questions that I will explore in this dissertation.

B. An Overview of the Argument

I begin the dissertation by providing a brief outline of a number of sociological approaches to law: structural functionalism; pluralism; and Marxism. I argue that the insights offered by these frameworks, especially pluralism and Marxism, can be enhanced by drawing on other theoretical approaches where meaning is treated as a central problematic. For this reason I turn to post-structural analysis which sets out how meaning is shaped in language and how meaning is context-dependent. I also consider how meaning is generated in narrative structures: by the way that individuals select events and then link them together to form a coherent whole. I use narrative to develop an understanding of the way that meanings are produced as well as how these change over time. I trace how narratives are deployed throughout the various phases of the Alberta labour review initiative, and illustrate how they give rise to specific proposals for and against legal change. I also consider how some narratives are suppressed and others are privileged as social conditions change.

Before I examine the details of the Alberta case, I provide some background on labour relations developments in Canada and Alberta. I present the material in terms of a number of narrative thematics (trade union and collective bargaining legitimacy, rights, the economy and the role of government) to show how understandings of labour law in Alberta in 1986 did not appear "out of the blue" so to speak but how they are shaped by and connected to the past. Next I turn to events at Gainers in 1986 and their role in the problematization of the *LRA*. I show how the dispute acquired meaning in a number of competing narratives. In an account presented by organized labour and the Official Opposition, tensions at Gainers were presented as the inevitable outcome of problems in the *LRA*. The belief that the *LRA* was in need of reform had been labour's view for some time. In previous years, however, labour's account had been without effect, reflecting its relative lack of power to affect the direction of public discourse and labour policy. During the Gainers strike I show how this changed and how labour's narratives on the dispute and its demands for legal change acquired new-found credibility.

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[5] *Labour Relations Code*, S.A., 1988, c. L1-2.

The Alberta government challenged labour's narrative, but without success. Public sympathy lay with labour and so the government reluctantly agreed to conduct a review of Alberta's labour laws. The Tories did not yield completely to the demands that flowed from labour's account of Gainers. The government made no promises to introduce the changes that labour had demanded and quickly made efforts to reorient debate on labour law away from the issue of Gainers to more abstract and less politically charged concerns. It began to draw on broader narratives on competitiveness and the concomitant need for greater consensus and co-operation in labour relations. These themes also appeared in documents issued by the Labour Legislation Review Committee (LLRC), the body that was established by the Tories in 1986 to undertake a review of Alberta labour law.

While the government and the LLRC tried to deny that the review was unrelated to Gainers, labour continued to cite the dispute to support its demands for change. Labour, however, did not limit its concerns to those issues brought into focus by Gainers. It began to expand its list of concerns, which were rationalized in narratives on rights and union and collective bargaining legitimacy. In briefs to the LLRC, employers and their associations tried to undermine labour's demands for change. Employers claimed that labour had misrepresented Gainers, that the dispute was aberrant and was therefore in no way a reflection on the *LRA*'s effectiveness. Employers also presented their opposition to labour's demands in narratives on management rights and the economy.

After examining the narrative accounts that supported demands for and against changes, I consider how these were taken up in the LLRC's *Final Report* and in Bill 60, which was introduced in June, 1987. I argue that the provisions in Bill 60 did not contain the major reforms that labour had demanded. By mid-1987, with the Gainers dispute settled and without public support, labour's demands were much less potent. This meant that the Tories could afford to ignore labour's demands, without jeopardizing its own legitimacy. The government was free to pursue the agenda that it developed as part of an effort to reframe debate on labour law (i.e., away from Gainers). Many of the changes in Bill 60 appear to reflect the government's narratives on the economy and consensual labour relations.

Bill 60 elicited a strong negative reaction from Alberta employers and their associations. Employers rejected government provisions that attempted to refashion traditional labour relations and reduce labour confrontations. Employers identified problem clauses in narratives on the economy, claiming that they would increase employment costs, reduce flexibility and compromise their competitive position. They also expressed concern about the infringement of management rights. Employers mounted a concerted lobbying campaign against Bill 60. In 1988, then, the government found itself under significant pressure from the business community to drop anti-employer provisions, provisions which had been identified in narratives on rights and the economy. These circumstances were very much different from the conditions that had prevailed in mid-1986. Labour had lost its ability to influence the government policy. The Gainers strike had ended and labour's demands were no longer backed by strong public support.

C. A Summary of the Chapters

In the chapters that follow I will present an analysis of the legal review that culminated in the passage of the Alberta *Labour Relations Code* in 1988. Below I provide an outline of the contents of the chapters.

1. Chapter II: Theory and Method

I begin this chapter by outlining a number of social theories of law, highlighting how they have tried to grapple with the issue of legal change. I present exemplars of structural functionalist and pluralist approaches to law and then turn to variants of Marxist thought. I contend that in these theories there has been a tendency to focus on what law does and that the issue of legal change *per se* has been treated as a somewhat tangential concern. For this reason I turn to post-structuralist theory and to narrative which offer insights into the way that legal meaning is produced. I argue that in exploring the complexity of meaning it is possible to better understand legal change: how a law comes to be viewed as problematic, how individuals are able to identify specific legal problems in legislation and how they are able to formulate demands for change. I also elaborate on method. I provide an overview of the texts that serve as the "data" source for this research and from which I extract narrative accounts of labour law. I further address how I will analyze the discourse documented in these materials.

2. Chapter III: Narrative and the Development of Canadian Labour Policy

The main objectives of this chapter are to provide the reader with an overview of labour policy developments in Canada and Alberta and with the necessary historical details so that she/he can situate the events that are presented in subsequent chapters. I have structured the material around a number of narrative themes: the legitimacy of trade unions and collective bargaining; rights; the role of government; and the economy. This allows me to trace how these narratives changed over time and to show how these also influenced legal developments. I begin by exploring how ideas on trade union and collective bargaining legitimacy have changed. I consider, for instance, how union legitimacy has played out in the struggle over union recognition. In a related issue I consider the emergence of the concept of rights for labour and the belief that labour law should endeavour to balance the rights of employers with those of labour. I also track understandings of government's role in labour relations and the way that this emerged in conjunction with the idea of protecting the public interest in labour relations. Finally I consider how accounts of the functioning of the economy have influenced the direction of change in labour law.

3. Chapter IV: Narratives on the Gainers Dispute and the Problematization of the Alberta Labour Relations Act in 1986

In this chapter I examine how, in the struggle to define the meaning of the 1986 Gainers dispute, the meaning of the *LRA* shifted. I begin by identifying a number of events that precipitated the dispute and that accounted for its volatility. Next I turn to the developments in the strike itself, focusing on the competing ways in which the events acquired meaning. Organized labour and the New Democrats, keen to use the events to politicize Alberta's labour policy, claimed that the strike was evidence of the *LRA*'s shortcomings and of the need for legal change. I show how the government first presented the strike as "normal" and how, when the debate shifted to the effectiveness of the *LRA*, the government portrayed the events as aberrant and as "atypical". Another account contained a strong economic theme. Gainers owner, Peter Pocklington, blamed the union for the strike because of its purported unwillingness to accept the "new realities" of the economy. I argue that the narrative that linked the strike violence to the *LRA* was the most persuasive. I address how this interpretation came to be privileged over other representations and how it influenced the Alberta government's decision to review the *LRA*.

4. Chapter V: Narrative and the Construction of Proposals for Change

In Chapter five I examine the first stage of the review initiative: beginning with the June, 1986 Throne Speech, in which the government stated its intent to review provincial labour policy, to the tabling of the *Alberta Labour Code* (Bill 60) in the summer of 1987. Bill 206—a private member's bill sponsored by the New Democrats in July, 1986—provides the first opportunity to examine how narrative is manifest in legislation. The provisions that were contained in Bill 206 addressed those aspects of the *LRA* that had been identified as problematic in the flawed law narrative on Gainers. Debate on Bill 206 is also useful as it reveals how the government was trying to reframe the review by linking it to changes in the economic environment, a prominent theme in the Labour Legislation Review Committee's (LLRC) official reports. In the rest of the chapter I identify narratives that appeared in public submissions to the LLRC and consider how these were taken up in LLRC *Reports*. I then examine how these narratives were manifest or suppressed in Bill 60.

5. Chapter VI: Interpreting Bill 60

In this chapter I examine reactions to the revisions that were proposed in Bill 60. Much of the chapter is an analysis of the briefs that were submitted by the public at the request of Alberta's Minister of Labour, Dr. Ian Reid. Bill 60 received little support and much criticism. Employers and employer associations responded to Bill 60 in a number of narrative accounts. A central theme was the economy. Employers claimed that the proposed changes would drive up employment "costs", reduce employment "flexibility" and thereby undermine "competitiveness". Employers also began to present the revisions in relation to "free trade" with the United States. Employers also explained how the changes would undermine management rights and would increase "government intervention". Trade unions also claimed that the revisions would result in a greater involvement in labour relations, their primary concern being how this would undermine union legitimacy. Unions also interpreted the Bill in narratives on rights: labour rights, such as the right to organize and the right to strike. Unions also expressed concern that the Bill had not responded adequately to its account of events at Gainers.

6. Chapter VII: Narrative and Bills 21 and 22

In Chapter seven I turn to the final phases of the labour law review: the introduction and passage of Bills 21 and 22. My main objective here is to identify how narrative is manifest in this legislation. First I consider the influence of those narratives constructed by employers and trade unions in their submissions on Bill 60. I also examine how the crisis created by the 1988 Alberta nurses' dispute revived public debate on labour law (i.e. the *Labour Relations Act*) and how these accounts appear to have influenced the contents of Bill 22. Much of the chapter focuses on the narratives that were presented by the New Democratic (ND) Official Opposition during legislative debate on 22. The NDs appealed to a number of narratives in an effort to discredit Bill 22 and to pressure the government to adopt certain amendments. I analyze the extent to which these were successful.

7. Chapter VIII: Conclusions

In the final chapter of this dissertation I provide a summary of my study of labour law in Alberta. I also discuss the strengths of the narrative approach and how this adds to our understanding of legal change. I end the chapter with some suggestions for further research in this area.

II. Theory and Method

A. Introduction.

Traditionally, the study of law has been the preserve of members of the legal community, and has been dominated by analytic jurisprudence[1], a tradition concerned exclusively with the complexities of legal practice. This approach emphasizes law's inner logic, and such matters as the nature of judicial decision-making and the development of case law. Legal reform has also been understood in terms of legal practice. Lawyers responsible for the interpretation and application of a statute become cognizant of its inadequacies — its contradictions, gaps and so forth — and subsequently call for its reformulation (Humphreys, 1985). Professional law reform agencies comprised of lawyers are established for the purposes of monitoring law and for addressing its anomolies and other technical problems (Hurlburt, 1986). This study will not examine these kinds of reform endeavours. Instead I am interested in studying legal change, where the law is not considered solely by lawyers in isolation from local and broader socio-political developments. I will also study law reform from a sociological perspective. Throughout the twentieth century, proponents of formalism (which contends that law develops autonomously without connection to the social world) have been forced to confront a growing challenge presented by what Hunt (1987) has termed the "sociological movement in law", an orientation which has extended the theoretical and methodological insights of sociology to the study of law.

I begin this chapter by reviewing three sociological approaches to law and legal change: structural functionalism; pluralism; and Marxism. My purpose here is not to provide an exhaustive review of each theoretical position but to set out the basic tenets of each approach. The three approaches highlight different dimensions of law. Structural functionalism links legal change to social differentiation and highlights the consensual dimension of law (i.e., value consensus). Pluralists see law as an outcome of group struggle and legal change as the result of shifts in group alliances. In Marxist analysis the law is conceived as a site of class struggle and as having an important ideological function. While these approaches offer certain insights into legal change they are limited in their ability to grasp the nuances of legal change: how, for example, specific provisions in legal doctrine are revised and why others are not. I argue that in order to understand change at this level it is critical to explore how legal provisions acquire meaning and how this changes over time. For this reason I adopt an interpretive approach that examines how meaning is constructed and "re" constructed in narratives. In the rest of the chapter I provide details on how I will conduct a narrative analysis of legal change in Alberta. In the next section I provide a review of three sociological frameworks on law; I return to these in the final chapter.

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[1] Legal positivism has been a standard, if not dominant theoretical approach to law-making. Hart's (1961) book entitled *The Concept of Law* is exemplary, though he claims to have written an "essay in descriptive sociology" (1961: vii).

B. Social Theories of Law

1. Structural Functionalism

In structural functionalism analyses law is believed to change as society increases in its degree of societal complexity. Durkheim's work is exemplary. It was not, however, Durkheim's objective to provide a general framework for understanding law and legal phenomenon (Hunt, 1987). Durkheim's concern was with social bonds and social differentiation, while the law was treated as an indicator of "all the essential varieties of social solidarity" (Durkheim cited in Hunt (1987: 67))[2]. Evolutionary models of law have also appeared in contemporary sociological works, such as that of Niklas Luhmann. Luhmann (1985) contends that the law responds to increases in societal complexity[3]: as roles become more differentiated there is a greater need for law to be more flexible and less context-oriented. Law becomes more abstract and generalized as evidenced by the abstraction of the individual, who becomes a bearer of abstract rights. In Luhmann's theory, laws in complex societies must be written to reduce the instability and tensions that result from high levels of differentiation. The goals of social integration[4] and the minimization of social conflict are paramount. By reinforcing these normative elements of society, the law is believed to act as a moral and binding force. The law is able to resolve conflict, and neutralize social tensions and other potentially destructive forces that threaten to disrupt social cohesion (Lukes and Skull, 1983).

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[2] Durkheim posited two types of solidarity. Primitive and less complex societies exhibited mechanical bonds of solidarity and relied on repressive law when the "collective conscience" was violated. More complex societies, however, relied on restitutive law. For more details on Durkheim's work on law refer to Hunt (1987, chapter four).

[3] Luhmann (1985) presents three stages in the development of law. In the first stage social relations are kinship based and societal complexity is low. Laws may not take a written form, as normative expectations are internalized as a result of tradition. In the second stage, "pre-modern high culture", there is a greater degree of complexity in both society and the law. Since "behavioural expectations" are more numerous the law must be less rigid and less orientated to specific contexts. In the third stage—the "positivisation of law"—the law must be more flexible, and should anticipate ways of creating stability in behavioural expectations.

Apart from the problems that inhere in functionalist logic[5], the sharp focus on functionality has produced other weaknesses. A significant outcome has been that law-making per se is not treated as a central problematic and receives relatively little attention. The preoccupation with laws' functions banishes other theoretical concerns and issues to the margins of the framework. Structural functionalism's preoccupation with the normative dimension of law, argue Lukes and Skull (1983: 7), effectively blinded its advocates "to the sociologically explanatory significance of how law is organized — that is, formulated, interpreted and applied...". Even Luhmann (1985), who writes specifically on legal development, insists that we must be resolved to draft laws that offset destabilizing influences, without elaborating how this is feasible. Law is also presented as the embodiment of a unity of values, of value consensus, a position that is difficult to support empirically (e.g., Mann, 1970). The contested nature of law-making is, however, a central feature of pluralist and Marxist theories of law.

2. Pluralism, Interests and the Law

While functionalist theory contends that the law is an expression of value consensus, pluralist theories present the law as the outcome of struggle, conflict and bargaining. Pluralists contend that society is fragmented into a large number of groups with which individuals have multiple affiliations. As Grindle and Thomas (1991: 23) write:

> the fragmentation of society into competing groups is a political analogy to the competitive market place in classical economics; like the economic efficiency derived through an open and competitive market, the public interest is thought to

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[4] Parsons (1962: 58), for example, has written that "the primary function of a legal system is integrative". This is also a concern in more contemporary works such as that of Podgorecki (1974).

[5] Functionalist arguments have been criticized for their teleological reasoning: by explaining developments in terms of the social system's functional requisites.

> be best served when policy emerges out of competition among large numbers of political interests.

Groups vie to defend and promote the interests of their members and to ensure that these are represented in public policy. The legislature is thus conceived as a body that:

> ...ratifies the victories of the successful coalitions, and records the terms of the surrenders, compromises, and conquests in the form of statutes...The legislative vote on any issue tends to represent the composition of strength...among the competing groups at the moment of voting (Latham, 1965: 35-36).

Though there is an effort to influence government it is assumed that it is not the intent of the various competing parties to control its formal operations. The state is assumed to be a neutral sphere in which conflicting interest groups attempt to direct policy (Dahl, 1961). The state merely acts to channel conflict. Policy-making is a response to societal pressures and the law is written and rewritten as group power shifts and as coalitions are formed and reformed.

For pluralists, the contents of a given law are shaped by the way that a prevailing group or alliance articulates its interests. There is an assumption here that interests are somehow static and fixed. Hindess (1986) contends that interests do not simply exist or appear, because they result from a process of assessment. Moreover, this process is not arbitrary or based entirely on free choice since individuals apprehend their interests by the "discursive means" or the ways of thinking that are current at a given moment in time (Hindess, 1986: 121). In pluralist analysis there is a neglect of broader concerns such as the way that available ideas shape policy demands (Anderson, 1984). This is a dimension of legal change that I explore in my analysis of narratives.

3. Marxism: Law and Social Class

a. Class instrumentalism

While pluralists see legal content in terms of competing groups and group interests, Marxists view the law in terms of social classes and class power and interests. Class instrumentalism presents law as a class agent; an expression of the will of a ruling class. Marxist theory contends that the ability of ruling elites to shape the law is mediated by the state, an instrument of domination that has emerged to serve the interests of capital and capitalist social relations. The ruling class ensures that the law is favourable to capitalist interests by using its economic power to lobby state officials, to finance political campaigns and so forth. Class based explanations of law and law-making are viewed as too crude and are difficult to sustain empirically (Beirne, 1979; Collins, 1982). The notion that the ruling class can manipulate the state and the law at will hides certain complexities such as the internal dissension that characterizes the ruling class. Certainly its most serious flaw is its inability to explain the enactment of state policies that apparently limit the interests of capitalists and that advance those of subordinate classes. This is especially evident in labour law where "working people have indelibly...imprinted their aspirations, values and struggles, both in victory and in anguishing defeat" (Klare, 1979: 45). Workers have won the legal right to join unions and to engage in collective bargaining (see for example Klare, 1978) and a range of other legal protections such as those set out in occupational health and safety laws, anti-discrimination laws (e.g. pay and employment equity) and so on. The idea that law is developed at the behest of a ruling elite is rejected in structural Marxist analysis (e.g., Althusser, 1969), which I outline next.

4. Structural Marxism

For structuralists the state cannot be manipulated at will by the capitalist class. Rather than searching for ties between economic and political elites (as in class instrumentalist studies), structuralists are more concerned with the internal workings of the capitalist system. The state is purported to enjoy a degree of 'relative autonomy' from the capitalist class and, as a result, can perform critical functions that are necessary for the reproduction of capitalist social and economic relations (Poulantzas, 1973). The states acts to neutralize contradictions and class-based cleavages that inhere in the economic sphere, a process which involves facilitating the process of capital accumulation while simultaneously engaging in legitimation. During times of crisis the state may institute policies that safeguard the long-term interests of the capitalist system. The enactment of legislation that grants protections to workers is presented as a means for the state to guarantee such interests. In this way structuralist Marxist theory has been able to address the enactment of laws that are seemingly incompatible with capitalist interests.

Smandych (1985), for instance, concludes that the passage of Canada's early (1890-1910) anti-combines legislation represented an attempt to "displace" the contradictions which had emerged between big business in its pursuit of combines, and small business and labour's demands for competition. The dramatic expansion of American labour's legal rights in the 1935 *Wagner Act* and their enforcement in the 1930s is examined by Karl Klare[6] (1978). Klare's chief concern has been to understand the way that the legal system has expanded employer rights while simultaneously finding a way to co-opt and undermine labour's struggle for greater industrial democracy. According to Klare, collective bargaining law expresses both "workers' aspirations" and "elite efforts to reinforce hierarchy and domination in the workplace" (1983: 99). These opposing impulses, he argues, must be carefully managed to ensure "system maintenance" (1982: 56).

While the theory of relative autonomy grants structural Marxist analysis a greater degree of sophistication in understanding legal developments, the approach is limited in a number of ways. Legal concessions that are made to the working class are purported to coincide with the long run interests of capitalism, yet it is unclear how the state becomes aware of such interests. The system is accorded specific needs, needs which are pre-given by the theory and assumed to be fulfilled by law. As Cotterrell (1984: 123) notes, the "functions and effects of law...tend to be fixed dogmatically by theory in advance of empirical analysis". As a result structural Marxist thought shares many of the same logical and conceptual difficulties as structural functionalism (DiTomaso, 1982; see also Cohen, 1994). The approach has been assailed for its focus on structures and its relative neglect of history (Thompson, 1978). Analysis at this level is not conducive for understanding the details and nuances of legal change, the object of this study dissertation.

5. Law as Ideology

A primary concern of Marxist theory has been law's ideological *function*: "its presentation as just and fair that which is inequitable, cruel and humane" (Klare, 1979: 132). Though the law appears to serve the interests of all, Marxists contend that in reality it disproportionately benefits a particular social class. In this way the law does not reflect social relations as they really are since its ideological dimension has distorted and obscured their true essence. Marxists distinguish between social relations in their 'phenomenal form'—that is how they appear—and social relations as they "really" exist (Hunt, 1976: 183; Hunt, 1993). Marx wrote that "commodity fetishism" played a critical role in masking social relations. Commodity fetishism involves the transformation of "use values", which are realized in their direct consumption, into "exchange values" when goods are brought into the competitive marketplace (Marx, 1977). During exchange, inherently unequal use values assume some equivalent form, a relation that is facilitated by money. Relations of equivalence thus serve to mask the labour power which a commodity embodies, as well as its qualitatively distinct nature and the human needs it is designed to serve. Fetishism of the commodity thus involves a number of critical transformations: the specific becomes abstracted, content takes on a form, and quality (use-value) is superseded by quantity (exchange value) (Milovanovic, 1988: 71).

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[6] Klare's work is generally considered a part of the Critical Labour Studies movement, though his writing draws on Marxism.

Marxist writers have also made a case that law is itself fetishised and that an homologous relation exists between commodity and legal fetishism (Pashukanis, Balbus, 1977). Pashukanis maintained that under capitalist relations of exchange the law and the subject were both fetishised. Human needs and interests were displaced by abstractions, phenomenal forms such as 'rights', and distinctions among individuals were superseded by the "*appearance* of a bearer of rights": the 'juridic subject' (Milovanovic, 1988: 72). During the process of commodity exchange two parties enter a relationship of equivalence where each views the other as a legitimate property owner who has entered freely into a contract as an equal with respect to the transaction. Just as the market extinguished use values and their inherent qualities from memory, the legal form, by focusing on the formal equality of all citizens, was able to mask the substantive inequities among individuals. The legal form of law—its level of abstraction, its reduction of social relations to contracts between individuals— is purported to disguise the law's essential oppressive character. The fetishism of law supports the formalist view of law, which casts law as autonomous and as having an existence of its own. The idea of formal equality "functions to mask and occlude class differences and social inequities" and is believed to be key in the persistence of capitalism (Balbus, 1977: 577).

Attempting to locate the origins of the bourgeois legal form in capitalist social relations, while insightful, is also limited. Reducing the legal form to the commodity form privileges the economic, a central problem in instrumentalist accounts of the law. Focus on legal structure also means that the framework is limited in its ability to account for the diversity of law as well as its complexity and its contradictions (Cotterrell, 1984). Marxism's focus on the ideological nature of law also centres attention on what law *does*, such as its role in legitimation, rather than how law is formulated. The view of law as ideology does, however, raise the issue of legal meaning which I believe is germane to the decision to revise existing law, as well as to the appearance of specific legal statements in the legal text. I turn to the problematic of meaning in the section that follows.

C. Problematizing Meaning

1. Exposing the Law's Hidden Meanings

In Marxist analysis the meaning of law exists at two different levels; some interpretations are ideological and disguise deeper, more essential meanings. Exposing law's hidden and unarticulated meanings has also been the project of scholars affiliated with the Critical Legal Studies (CLS) Movement[7]. Karl Klare (1978; 1982; 1983), who has provided an extensive analysis of developments in American collective bargaining law, has adopted many of the same theoretical concepts that appear in Marxist analysis. Klare's work represents an assault on "liberal legal theory"[8]— which supports legal positivism— the belief, for instance, that legal rules are objective and yield predictable results in their application. In highlighting the consensual nature of bargaining and the neutrality of labour law, liberal theory is deemed to have concealed the realities of industrial relations. Klare has attempted to demystify labour law by revealing how liberalism masks a set of much less appealing meanings under the guise of industrial democracy and consent[9]. The idea of bringing the law's "real" meaning to the fore, however, is problematic in that it assumes that there is an essential meaning that needs to be uncovered.

2. Meaning and Language

The idea of an essential meaning has been made problematic with the "linguistic turn" in social theory (Denzin & Lincoln, 1994: 11). Language is no longer regarded as a transparent medium, a development that has significant epistemological implications: it has precipitated a "crisis in representation". Language was assumed to capture and present reality unambiguously and to afford the researcher direct access to some dimension of social reality. Richardson (1990: 120) claims that this "modernist" conception of science writing has dominated in social scientific research[10]. If language cannot objectively reflect reality, there can be no isomorphic relation between proposition and reality and no truths based on the norms and rules of correspondence. Since language operates through metaphor, our words cannot provide a true account of an objective reality. If there is no founding or ultimate signified, there can also be no reference point, no grounding, no truth, at least in the foundationalist sense. Language communicates certain ideas about reality yet it can never permit us to access events or human experiences directly so that we may know them in themselves. We can only use language and other signs as representations, substitutions for experience. Moreover, since the author cannot remove him/herself from language, there can be no objective view of the reality in question. As Brown (1990: 188) notes representation is made from some point of view and within some frame of vision. There is no true or final representation for the act of representation is neither neutral nor objective. Instead, there are only "re"-presentations, where signs refer to, and are substituted by still other signs. This view is taken up in post-structuralist theories of meaning.

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[7]. CLS is best characterized as an intellectual movement: its members espouse no single school of thought but treat law in a highly eclectic fashion. While some 'critical' approaches to law draw on the insights of Marxism and neo-Marxism others appeal to postructuralism, deconstruction and pragmatist philosophy (see Tushnet, 1986; 1991).

[8]. See Hunt, 1986 for a more detailed description of liberal legalism.

[9]. Liberal thought is purported to realise this by highlighting the contractual nature of bargaining so that the process appears consensual, and by linking the idea of "fairness" in negotiations to due process rather than to the substantive outcome of such negotiations.

[10]. Durkheim, for instance, called for the discipline of sociology to purge itself of everyday language so that an objective account of social facts could be obtained. Objectivity has also been an important goal

3. Post-Structuralism

Post-structural accounts of language builds upon the work of linguist, Ferdinand de Saussure. Saussure conceived of language as a system of signs, where each is comprised of a signified, "not a thing, but a notion of a thing", and a signifier, a discrete sound and written image (Sturrock, 1979: 6). Meaning, for Saussure, did not inhere naturally in the sign, but by convention. The meaning of a sign was instead relational; it was dependent upon its difference from other signs. The signifier and signified

> are caught up in a play of distinctive features where differences of sound and sense are the only markers of meaning. Thus, at the simplest phonetic level, *bat* and *cat* are distinguished (and meaning is generated) by the switching of initial consonants (Norris, 1991: 24-25; emphasis in original)

Post-structuralists have criticized Saussure's position, in particular his notion of the stable sign. By treating signs as "positive facts", as fixed entities, his theory is unable to grapple with the plurality of meaning or shifts in meaning (Weedon, 1987:24).

Post-structuralists have therefore modified Saussure's account in an attempt to provide a more dynamic account of meaning. Derrida posits that

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in qualitative studies especially in the 'traditional' and 'modernist' phases of qualitative research (Denzin and Lincoln, 1994). Providing an objective account of field experiences was cited as a primary concern in classic ethno[illegible]phic works such as those of anthropologist Malinowski.

signifieds and signifiers are not discrete, fixed entities, from which meaning emerges. Instead their relation is fluid and circular: signifiers are in a state of flux, breaking away from, and becoming reattached to other signifieds. Signifieds become signifiers for other signifieds, so that every signified is itself a signifier for some other signified. For Derrida:

> ...meaning is not immediately present in a sign. Since the meaning of a sign is a matter of what the sign is *not*, this meaning is always in some sense absent from it too (Sarup, 1989: 35; emphasis in original).

Meaning, then, is not present in the sign. Derrida illustrates this point in his deconstruction of binary oppositions. Oppositional terms, he contends, are mutually dependent as each must appeal to the other for its meaning. Each concept is understood by establishing that which it is not. The term 'truth', for example, derives meaning not only by differentiating itself from the concept 'falsehood' but also by deferring to it[11]. Concepts, Derrida has contended, bear "traces" of other, absent concepts upon which they depend for their meaning. Meaning is not present but is dispersed along a chain of signifiers. Sarup (1989: 36) writes:

> When I read a sentence the meaning of it is always somehow suspended, something deferred. One signifier relays me to another; earlier meanings are modified by later ones. In each sign there are traces of other words which that sign has excluded in order to be itself. And words contain the trace of the ones which have gone before. Each sign in the chain of meaning is somehow scored over or traced through with all the others, to form a complex tissue which is never exhaustible.

The meaning of a sign is context dependent: on the accompanying chain of signifiers. As a result meaning becomes unstable and fluid.

4. Meaning and the Importance of Context

The significance of context in the production of meaning has important implications for the intentionalist theory of meaning. It is often assumed that meaning is created and deposited in the text by a knowing subject. Understandings of legal and other texts are transmitted in language, a system of signs which existed prior to the subject, and over which the author has no direct influence (Culler, 1982). Meaning is thus created and given in language, a position which challenges the intentionalist paradigm of interpretation which assumes that the meaning of a text can be discovered by retrieving what the author(s) "had in mind" (Dworkin, 1983). Legal practitioners may attempt to extract the meaning of a legal text by ascertaining what the legislators *intended* in their selection of words. Authorial meaning is privileged and is expected to remain the same irrespective of historical, political and cultural change. But as Derrida has argued the words of a text can perform in ways that the author never intended or anticipated. Interpretations can later be drawn, conclusions reached and contradictions identified that were inconceivable to the author. The authors of the United States' "equal protection" clause, writes Balkin, "probably did not contemplate that one day its words would strike constitutional scholars and judges as requiring equality between men and women" (1987: 778). Though the words of a legal text may be unaltered, changes in context can produce dramatically different interpretations. In this sense the text takes on an existence of its own, independent of the author but bound by context. We must contend, therefore, with what Derrida has labeled the "free play" of text: its "undecideability", its indeterminacy and its openness (Norris, 1991).

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[11] In French the verb differer means to differ and to defer. Derrida alters the signifier, difference, by replacing the "e" with an "a" to produce a new term "differance". The change has no effect on pronunciation, so the difference only becomes evident in writing.

5. Meaning and Narrative

Representations of the social world are fashioned in language which is filled with grammatical, rhetorical and literary devices. Meaning is also created in language through the use of narrative structure and devices. The narrative is a vital organizing schema. Narrative is ubiquitous and is manifest in a wide range of forms such as myths, legends, fairy tales, personal and organizational histories, newspaper articles, films, courtroom testimony, confessions and so forth. As Barthes has noted:

> The narratives of the world are without number...[N]arrative is present at all times, in all places, in all societies; the history of narrative begins with the history of [hu]mankind; there does not exist, and never has existed, a people without narratives (Barthes quoted in Polkinghorne (1988: 14)).

The ability to tell stories is a skill that is learned early in life and is often regarded as a "natural...impulse" (White, 1981: 1). Narrative gives the passage of time an important human dimension (Ricoeur, 1981). Time is not understood in terms of discrete minutes or hours but in terms of accounts of what happened in a given day, month, year or lifetime. Individuals construct narratives about their past to give their present lives meaning.

Individuals construct narratives so that they can give meaning to their personal experience. Narrative makes it possible to organize experience into a coherent form that can be readily communicated to others. Coherence is imposed by the storyteller and is not something that is "out there" waiting to be observed by an objective onlooker. The life story is not "the mirror of life events" (Rosenwald & Ochberg, 1992: 5). At different stages of their lives, individuals may recount their past in different ways, excluding some events while including others. Personal histories may be reinvented as the circumstances of the present change (Richardson, 1990). The meaning of the present is unstable as new circumstances and experiences alter the significance of earlier events. The meaning of the present may take on different meanings in different narratives, some of which may be complete, while others are left unfinished. Autobiographical accounts are more than representations of one's life, they are constitutive of identity (Rosenwald and Ochberg, 1992).

Narrative also operates at levels beyond the autobiographical. Narratives are told at the organizational level. Management officials might recount how, over the years, a company has gone out of its way to treat employees fairly and respectfully. A union may present a conflicting story in which workers are exploited and ill-treated by the company. Narrative also operates at the cultural level, presenting the fate of local heroes and villains and stories about, inter alia, community and worker struggles, successes and failures.

Narrative has received the most attention in literary criticism (Martin, 1986). Interest in narrative, however, is no longer restricted to students and scholars of English, but has spilled over into other disciplines providing further evidence of the "blurring of genres" (Geertz, 1980). Narrative has been taken up in the human sciences, such as psychology (Polkinghorne, 1988; Sarbin, 1986), sociology (Maines, 1993), organizational analysis (Boje, 1991), economics (McCloskey, 1990) and women's studies (Personal Narratives Group, 1989). Interest in narrative has also infiltrated the physical sciences (Myers, 1990). There is also a burgeoning literature on narrative and the law (Sherwin, 1988; West, 1985).

In this study I will use narrative to examine legal change in Alberta in 1986. To summarize the previous discussion, I believe that an analysis of narrative representations will be useful because it allows us to track how legal meanings are produced and change over time and how these understandings in turn shape proposals for legal change. In order to do this I will provide some additional details on the narrative form. In the next section I examine how to identify narratives.

a. Conceiving Narrative

Narrative has been conceived in a variety of ways. Labov (1972), for example, sees narratives as comprised of a number of elements each serving a particular function[12]. In this study I rely on a less rigid conception of narrative. I see narratives as "representation[s] of unobservables in a time/space configuration" (Maines, 1993: 21). Narrative meaning is created from the selection of events and the way in which these events are configured. A narrative is more than just a temporal ordering of events—it is not just a chronology. Polkinghorne (1988) argues that narrative is comprised of two types of referents: a "first order", which are the events that make up a story; and a "second order", namely the plot. The plot conveys a central point or theme (Maines, 1993). It weaves together a set of events to produce a schematic whole from which a higher level of meaning emerges. Just as meaning is shaped by the way in which words are organized to construct a sentence, narrative meaning emerges from the way that statements are connected. Polkinghorne (1988: 32) explains that:

> Not every combination of words will produce a meaningful sentence (for example, "Strain blue flute help" is not a meaningful sentence); nor does every combination of sentences produce a meaningful discourse or text. For example the sentences, "The rain is cold," "Albert fell down the stairs," and "The plant has dried," do not gather themselves into a meaningful discourse. However [...] The sentences, "Her husband was very ill," "He died," and "She was sad and lonely," produce a discourse of narrative meaning that is greater than the individual sentences alone. Speakers and writers draw on the different principles of discourse

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[12]. Labov's (1972) sociolinguistic approach is often treated as "paradigmatic" (Riessman, 1993). Labov has contended that a fully developed narrative is comprised of six elements: an abstract (which summarizes the main point); orientation (the setting); complication (event sequence that shows a turning point, crisis); evaluation (significance of the event); result (outcome); and coda (returns listeners to the present). Labov contends that a clause manifests narrative when its interpretation is altered in some way if it were to appear earlier or later in the account. This approach has been criticized for defining narrative too narrowly and for ignoring the way that authors use devices such as flashbacks and flashforward to generate narrative meaning (Cortazzi, 1993: 49).

> formation when they want to produce an order of meaning beyond that possible with individual sentences.

By weaving together a number of events the narrator is able to produce narrative meaning.

Narrative meaning may vary because a story is constructed from different basic elements or first-order referents. The way in which events are interwoven with contextual details into a plot can further constrain meaning, allowing the reader to draw some inferences while precluding others. Narrative meaning is shaped by where a story begins and ends. Stories do not have natural beginning points, although, as Scheppele (1989) notes, many appear to be so, owing to the strong background assumptions that are often made. For instance, in a legal setting, where the story starts and ends is critical to the outcome of a dispute. Interpretations are also contingent upon the way that an event is related to other elements of the story by the plot. With different plot lines the same event can signify in different ways.

In other conceptions of the narrative form, the wider social and cultural environment have received scant attention. Adopting the methods of linguistics, structuralist literary theorists have posited that narratives are generated by a set of deep cognitive structures that are unaffected by day to day experience. Structuralists were less concerned with the surface features of narrative (e.g. the particular characters) than with the set of rules that were believed to have generated them[13]. Structuralists, however, have been criticized for treating narrative as static, atemporal entities that are unaffected by human experience (Ricoeur, 1981). The high degree of abstraction of structuralist schemas are thought to have limited use given the context-dependent nature of narrative meaning. Structuralist accounts are also unable to capture the complexity of meaning that inheres in the details of the narrative (Polkinghorne, 1988). Like the elements that are common to other stories, the particularities of a narrative are important in the way that the tale pulls together.

b. Narrative Explanation

In addition to representing experience of reality, narrative also operates as a mode of reasoning and explanation. Narrative explanation differs from the hypothetico-deductive approach of formal scientific logic in its goals and its method. In formal science, explanation occurs at the level of abstracted categories whereby an event is explained when it can be shown to be an instance of a law or pattern of relationships. In contrast narrative explanation is unconcerned with making generalizations or finding laws that hold regardless of context. In narrative explanation causality does not require a search for "constant antecedents" (Polkinghorne, 1988: 173). Instead narrative seeks to understand an event in terms of a particular sequence of antecedents that might never be repeated (Ibid). Context is critical to narrative explanation. In narrative, causality emerges from the links that are drawn between specific events in a temporal ordering. The narrator begins with a specific outcome (effect) and then works backwards to select those events and circumstances that are considered germane to the ending (cause)[14]. The story is then judged by the extent to which the selected events are organized to make the outcome seem reasonable and believable. Some narratives may be more persuasive or better than others because of the "facts" that are selected and the way that these are stitched together (i.e. the narrative's logic). Understandings of what counts as reasonable are also context-specific, an issue to which I return later in the discussion.

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[13]. Propp, for example, sought the underlying structures that supported Russian folk tales. He contended that a narrative was determined by 31 underlying "functional units" and that the meaning generated was contingent upon their arrangement.

Narratives are not limited to events that have occurred in the past. Narratives may also pertain to events that might not or will never transpire: the imaginary and the hypothetical (Riessman, 1993). In an effort to isolate causality we may conduct the kind of thought experiments proposed by Max Weber. We surmise what might have happened had an event or situation been different, and then by drawing a comparison between the hypothetical outcome and the actual outcome. If the two were to yield different results, then it is possible to attribute causal significance to the first event. Polkinghorne contends that such experiments "actually involves the testing of different plot schemes" (1988: 173). The ability to construct imaginary "'what-if' scenarios" can serve any number of purposes, including the way that we consider legal change.

c. Narrative. Power and Discourse

What gets included and omitted from narratives does not occur haphazardly. Narrative accounts of an event are partial in that they are a "selective reconstruction" of the past (Riessman, 1993: 64). Narratives are human creations. In their accounts narrators may *choose* to draw attention to some "facts" while also being careful to exclude others. As Dijk (1993: 33) notes, narrative structures:

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[14]. The idea of causality is critical in narrative explanation. The view that cause is always logically prior to an effect and that cause is an originary concept has been challenged (see Culler, 1982: 86-88).

> reveal not only the organization of mental models, that is, how an event is experienced, interpreted, and evaluated, but also, implicitly or explicitly, the norms, values and expectations of the storyteller about social episodes.

Similarly, narratives may reflect the beliefs and political agenda of the narrator, whether that be an individual speaking for her/himself, or on the behalf of a corporation, trade union or political party. Narratives are interpreted by those with different agendas who may then assert counter-visions designed to undermine and supersede the initial account. In this way it is possible to see how the production of meaning in narrative is a dynamic, political process and a process of struggle. Narratives are not "innocent" (Riessman, 1993: 65) because they are themselves important expressions and strategies of power. They constitute a means of exercising and resisting power. In addition to recognizing how narratives themselves are "laced" with power it is important to remember how they are also deployed within a broader context of social inequality (Ibid). As a consequence accounts presented by those with greater access to resources are likely to reach a wider audience and to have a greater influence on the direction of public discourse. Power is infused in narrative discourse and effects which narratives are more likely to be heard.

The stories we can tell are also are shaped by the norms of discourse. Sets of statements, or combinations of signifiers that appear in documents at a particular historic moment represent only a small sub-set of those which are made possible by logic and grammar (Gutting, 1989: 231). In making sense of events subjects draw on certain normative ideas about the world. Groups of statements are subject to a set of normative rules—discursive formations—that are adopted unconsciously by individuals. Discursive rules are not fixed and have no transcendental quality; they are instead historically specific and contingent. The rules of discursive formation differ from linguistic rules. Foucault (1972: 27) writes :

> The question posed by language analysis of some discursive fact or other is always: according to what rules has a particular statement been made, and consequently according to what rules could other similar statements be made? The description of the events of discourse poses a quite different question: *How is it that one particular statement appeared rather than another?* (emphasis added).

This bears direct relevance to this study since the main aim is to understand how particular legal statements appeared Alberta's revised labour relations legislation in 1988. How we make sense of events and texts is guided by how we can think about the social world: a "system of possibility of knowledge" (Philp, 1985: 69). Individuals tell stories about their experiences and the social world in a particular way by drawing on wider sets of ideas that are in circulation at a given moment in time. To understand how narratives are constructed in a particular way and how these give rise to specific demands for legal change it is imperative that they be viewed in relation to the broader discursive context.

d. Narrative and Truth

In addition to circumscribing the sayable, the rules that govern a discourse also enable subjects to ascertain those statements that are viewed as "true", credible and defensible. Shifts in discourse bring shifts in the meaning of signs, and the rules that permit evaluations of the veracity of statements. A popular view is that there is only one, "true", objective account of an event. An account is objective because it does not reflect any particular point-of-view or interest. It is from this state—this absence of partiality—that such an account derives its power (Schepple, 1989: 2082). The idea of a singular truth operates in the courtroom. Generally participants in the legal process do not get to observe the events in question but are left to ascertain the "truth" from the competing accounts with which they are presented. Some narratives, however, are viewed as more credible than others and are seen to correspond to what "really happened". Such privileged accounts are transformed into the "facts" of the case. As Scheppele (1989) notes, truth is not a feature of an event per se, but rather describes an account or interpretation of an event that is itself a product of political struggle[15]. Truth is the privileging of one account over others. Moreover, this is a process that is not isolated from societal relations of power. Richardson (1990), for example, contends that dominant (privileged) cultural narratives reinforce the normative order and operate as truth while 'collective' narratives better capture the stories of marginalized groups—such as women and ethnic minorities. Truth is not something that exists "out there" waiting to be discovered by some neutral observer. Nonetheless it is something that has material consequences for those affected.

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[15]. Even when an event is captured on videotape its meaning is not self-evident. Goodwin (1994) examines the way in which video-taped evidence of the 1991 beating of Rodney King was presented in the trial of the accused police officers. The prosecution assumed that the tape would "speak for itself" and claimed it presented "objectively, without bias, impartially, what happened that night" (cited in Goodwin, 1994: 615). Goodwin notes that the defense lawyers did not let the tape speak for itself but went on to construct an alternate account in which King was cast as an aggressor and as a threat to police. This presentation then enabled the defense to advance the claim that the police officers were entitled to use force. Goodwin insists that the view of the tape presented by the defense were not "merely lawyers' tricks designed to distort what would otherwise be a clear, neutral vision of objective events" (1994: 606). The meaning of an event is not something that can be readily observed or discovered.

The idea that there is no neutral account of an event and that truth is a privileging has created fears about an endless and pointless relativism. Such charges, however, have themselves been questioned and criticized as "impetuous" (Culler, 1982:133). Deconstructing privileged accounts, writes Balkin (1987: 763), is not a "call for us to forget moral certainty" but rather a challenge to recall social visions that were marginalized by the privileged conception in question. In the following section I illustrate narratives relevance to law.

e. Stories and the Legal Text

Like stories, laws do not reflect the social world as it really is. Laws manifest traces of certain privileged ways of thinking about and understanding the social world. The rights that are identified for legal protection, for instance, reflect certain ways of seeing. Legislation that bans unions and punishes workers for joining unions, for example, tells a very different story about society than laws that encourage union formation. Laws privilege certain accounts or stories. Balkin (1987) illustrates how this may operate. He writes:

> We can think of a system of law as a community's attempt to realize human ends. This presupposes a description of the good and the bad in human nature: what people want from their lives and what their limitations are. This description necessarily involves privilegings of certain aspects of human nature over others[...]For example, an advocate of laissez-faire might argue that, given the natural self-interestedness of people, unregulated market transactions are the best way to realize human goals. But the deconstructive critique reminds us that our social vision and system of laws are not based upon human nature as it really is, but rather upon an interpretation of human nature, a metaphor, a privileging. We do not experience the "presence" of human nature; we experience different versions of it in the stories that we tell about what we are "really like" (1987: 762).

Privileged visions that become embedded in legal statutes marginalize other, counter visions. Yet a privileged account, such as the laissez-faire-based vision of human nature, can also be shown through deconstruction to be incomplete and ultimately dependent upon those views that it has marginalized. As Balkin explains upon closer examination a law based on the laissez-faire principle must also presuppose a certain amount of social co-operation. Stories play a critical role in shaping what gets included or left out of legal statutes. Laissez-faire ideas about the economy, for example, support a vision of employment relations as a series of individual contracts between an employer and each of his/her employees. To protect this vision the law may contain provisions that prohibit the formation of trade unions and prescribe punitive measures to be applied where workers establish and join such organizations. Privileged visions of the social world that are manifest in stories about the law circumscribe what counts as reasonable and acceptable content in a legal text.

As I have argued earlier, the meaning of the legal text is unstable. It is not a "thing" that is deposited in a document by legislators that can readily be retrieved by the legal practitioner. Instead meaning is context-dependent, as is evident in the development of jurisprudence. New circumstances and situations arise that result in the reinterpretation of statutes. A reading of a law that was widely accepted and privileged may suddenly shift and appear problematic. What was once deemed a legitimate reading may, at some later point, be considered illegitimate, a misreading, and substituted by what is considered a more accurate interpretation. Culler (1982: 176) describes the dynamics of readings and misreadings thus:

> Given the [...]extendability of context [...] every reading can be shown to be partial. Interpreters are able to discover features and implications of a text that previous interpreters neglected or distorted. They can use the text to show that previous readings are in fact misreadings, but their own readings will be found wanting by later interpreters, who may astutely identify the dubious presuppositions or particular forms of blindness to which they testify. The history of readings is a history of misreadings, *though under certain circumstances these misreadings can be and may have been accepted as readings* (emphasis added).

The idea that the meaning of a text is not fixed or "present", and that it context sensitive, has also brought charges of nihilism. Yet as Balkin (1987) maintains, deconstructing the divide between what are considered correct and incorrect readings raises a more significant issue, namely understanding the means by which readings get redefined as misreadings. Coming to terms with this transition offers a way of understanding how statutes that have operated without question, often for some considerable time frame, are suddenly perceived as problematic and in need of revision. In other words how can we understand this shift in the way that the law is interpreted?

f. Identifying Narrative

The narratives that have shaped the contents of a text are not always immediately evident. Often the narrative form is suppressed or stripped away to comply with a particular writing convention. Maines (1993) maintains, for example, that the scales that sociologist's use in their research questionnaires limit the way in which subjects are able to tell their own stories. For the purposes of data reduction the researcher presents a scenario and asks the subject to select a number representative of his/her experience. This process, Maines (1993: 25) argues, conceals the way that respondents enter into a dialogue with their own biography to establish if and how an item is applicable to them. Myers examines how scientific discourse suppresses certain narratives. In accounts of scientific discovery the scientist's narrative (e.g. researchers' personal stories, decisions, serendipity, etc.) is stripped away from the discovery process thereby transforming it into scientific "fact". This fact is subsequently adopted in a new narrative in which the discovery becomes a critical event in the changing state of scientific knowledge. In scientific discourse, the object under study (which appears to have been awaiting discovery) replaces the scientist as the chief actor (Myers, 1990, 106).

The narratives that shape legislation are not immediately apparent in the legal text. Legal statutes are written in a manner that promotes the idea that law is a social fact: as an objective, freestanding entity that appears to impinge on society from above. This apparent independence and detachment is supported through a series of grammatical and rhetorical conventions. Juridic language is dominated by "linguistic procedures" which have two primary effects: neutralization and universalisation. Neutralization is the product of "impersonal constructions" that are employed to establish the "impersonality of utterances" as well as the "speaker as universal subject, at once impartial and objective" (Bourdieu, 1987: 820). Universalization is realised through, *inter alia*, "constative verbs in the present and past third person singular" and "the use of indefinites and of the intemporal present" (Ibid). The legal text is produced so that it appears to have no discernable author. Having no identifiable point-of-view, a statute appears to be objective and to lack human bias. It is from this apparent point-of-view (lessness) that the authority of the legal text appears to flow. The law appears as a social fact.

Public and political discourse on legal change does not take the same stilted form as the legal text. Instead stakeholders draw on local and broader understandings of the social world to construct narratives about the law. Interested parties may tell different stories about what they believe the law should do and the extent to which they believe it has realized these objectives. The stories may be constructed from different events or "facts" and begin and end at different timepoints. During political debate legislators try to advance their own and contest each others' accounts of labour law by drawing on narratives that support conflicting agendas for legal change. One party may draw attention to certain problems within a statute, recounting events that are meant to illustrate this point. Another party, in its efforts to defend the law, may gloss over its weaknesses and highlight it strengths instead.

Throughout this chapter I have emphasized the importance of context in the construction and transmission of meaning. I have noted how the legal text is written in such a way that it appears unrelated to and abstracted from any social context. Legal change, however, is a social activity that is socially and historically contingent. To understand how certain statements appear in legal doctrine, the legal text should be reconnected and considered in relation to the social and historical milieu that it appears to deny. Law-making is a political struggle to privilege/certain visions of the world. By viewing the law in relation to those narratives that were in circulation at the time it is possible to see how the legal text has privileged certain accounts and suppressed others. The law needs to be located in the discursive context in which it was debated and written. Viewed in relation to these understandings, law acquires new significance. As Balkin notes, "Even the...most insignificant or neutral doctrines or rules...have a story to tell, if we are willing to listen to them" (Balkin, 1987: 762).

D. Conducting the Study

In this section I discuss method. First I examine why this dissertation should be treated as a case study of legal change. I then provide an overview of the texts that serve as the "data" source for this study. I also discuss how to conduct narrative analysis and conclude by providing a preview of the narrative themes that shape understandings of legal change.

1. Why study the Alberta "case"?

My interest in legal change grew out of limited knowledge of a particular case: the 1986-1988 Alberta labour law review initiative. In familiarizing myself with Alberta labour relations I learned about the coincidence of the widely publicized 1986 dispute at Gainers and demands for revisions to Alberta's *Labour Relations Act*. Upon further investigation I learned that the government had established a Committee to review the law and that in 1988 a new labour statute had been introduced. Though the new *Labour Relations Code* introduced a number of significant changes they did not appear to address the concerns that had arisen several years earlier. This raised a series of questions about legal change in the Alberta case. How were the changes in the new *Code* to be accounted for?

This dissertation is "a concentrated inquiry into a single case" of legal change and as such constitutes a case study (Stake, 1994). Not all case studies, however, are undertaken with the same objectives in mind. In positivist-oriented research a case study may be undertaken solely for exploratory purposes, such as for generating testable hypotheses. A researcher may decide to select more than a single case for the purposes of obtaining details on the degree of variability in some population of interest. In this study I examine the 1986 Alberta labour law review initiative to provide an in depth analysis of legal change. Focusing on a single case in this way is thought to come at a cost of the loss of generalizability, especially to those operating within a positivist framework. Among qualitative researchers there has been a greater appreciation of the value of focusing on the individual case: its ability to provide a rich and thick level of detail and description (Denzin and Lincoln, 1994). According to Stake's (1994) typology, an 'intrinsic' case study is one that seeks a better understanding of a single case. It is not undertaken because it is typical of another case or because it illustrates some problem or another, "but because, in all its particularity and ordinariness, this case itself is of interest" (Stake, 1994: 237).

An examination of the 1986-1988 review of Alberta's labour laws has intrinsic value as a case study: to reach an understanding of the changes that were enacted in 1988. The nature of the review process—that is the presentation of a 'draft' Bill (i.e., Bill 60) in 1987 and then Bill 22 in 1988— allows me to track the influence of narrative on the legal text at two separate points in time. The case is also valuable because of the availability of documentation to support such an inquiry. I was able to obtain access to two complete sets of submissions: one on the existing labour relations legislation in 1986; and the other on Bill 60 legislation that was introduced in the summer of 1987, but was not pursued. The initiative is also documented in provincial press reports.

The Alberta case can also offer insight into broader issues which means that in Stake's (1994) terms the study also qualifies as an 'instrumental' case study. The length of the review process—more than two years—makes it possible to track change and continuity in the ways that we construct labour law and, in turn, the way that these narratives became manifest in proposals for change. The case also provides an opportunity to see how an industrial relations crisis, in this case the events at Gainers, alter understandings of the law and shape legal change. This is significant as a review of Canadian labour policy reveals that crisis and legal change are often connected (see chapter three). The Alberta review is also significant because it occurs at a time when there is a growing doubt about the efficacy of the traditional Wagner-based approach to labour relations. The study allows me to see how narratives on adopting a "new" approach to industrial relations are manifest in debate on Alberta labour law as well as in Bills 60 and 22.

2. The Texts

Since the events that I wish to examine have occurred in the past I must rely on various texts to conduct this study. Texts record traces of interpretations of events at particular points in time. While there is the risk that some materials may not survive the passage of time and that some interpretations may not be written down, fortunately, this research was made possible by a wealth of documents. In the following section I begin to review these documents. I first provide a review of the legal texts that contain the legal revisions that I am trying to understand in this study. I then consider the range of non-legal texts that document the context in which legal change was considered.

In this study my central aim is to understand legal change. In other words I am trying to grasp how some statements and not others appeared in the legal text. An important element of this study involves isolating the changes in the revised legislation. A study of the 1986 Alberta legal review is predicated on a reading of number of legal texts. The first requirement is an awareness of the provisions contained in the Alberta *Labour Relations Act* (*LRA*), legislation that in mid-1986 became the subject of considerable public debate. The government's first attempts at revising the *LRA* came a year later with the tabling of Bill 60, the *Labour Code*[16]. This legislation, however, was not pursued and in April, 1988 the Tories introduced Bills

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[16] Before the Tories introduced Bill 60, the Opposition introduced Bills 206 and 229.

21, the *Employment Standards Code* and Bill 22, the *Labour Relations Code*. These Bills were later amended during the legislative process and then enacted. During the course of the research it also became clear that I would need to consult additional legal texts, such as legislation that amended the *LRA* in 1983 (i.e. Bill 44) and that was drafted to amend the *LRA* but that was never proclaimed and subsequently withdrawn (i.e. Bill 110).

Examining legal texts as discrete entitites and then in relation to earlier and subseqent text is necessary, though not sufficient for an understanding of statutory change. As I have noted earlier, it is not helpful for my purposes to examine law as though it were internally coherent, and unfolded according to some inner logic in complete isolation from its social environment. Viewed on its own, and in relation to other legal documents, the legal text is stripped of much meaning. Though the product of social activity in a specific socio-historical time frame, the legal text is silent on the social conditions, events and debates that prompted its revision and shaped its new provisions. The legal text cannot tell us why its provisions were reviewed and revised; it cannot "speak for itself" in this regard. We are forced, therefore, to look beyond the pages of legal doctrine to other texts which provide details of the discursive environment in which legal reform was considered. By viewing legal doctrine in relation to other non-legal texts, meanings that were not otherwise apparent are brought into focus. In this way it is possible to explore the layered, sedimented nature of legal meaning. This approach also provides insight into the social mechanics of legal change: how certain provisions were identified as problematic and in need of revision, and the way that legal proposals are constructed. Understanding the details of legal change—how certain clauses/practices were questioned and how others clauses came to be included or excluded from the legal text—requires an examination of texts that contain representations of the law in question. From these texts it is possible to see how discourse on labour law imposes constraints on what the laws can and cannot say.

In this study I have relied on an array of non-legal texts, that have different discursive styles and structural features. The most detailed accounts of Alberta labour law were presented in written submissions by members of the general public. Two sets of briefs were submitted during the 1986-88 review initiative. The first set were submitted to the Labour Legislation Review Committee (LLRC) established to conduct a review of Alberta labour law in connection with the *Labour Relations Act*. The second set were submitted on Bill 60 at the Minister's request. Both sets of submissions were made available to me by the provincial department of labour: Alberta Labour.

There were a number of state sponsored, "official" documents. The Committee established to review Alberta labour law in 1986—the Labour Legislation Review Committee—produced two documents: An *Interim Report* in November, 1986 and a *Final Report* in February, 1987. The *Interim Report* is useful because it sets out how the Committee planned to frame its review. The *Final Report* provided a "re"-presentation of Albertans' views as presented in submissions on the *LRA*. It also contained recommendations along with rationales for legal change. A number of other government sponsored documents, such as Alberta Labour newsletters and news releases, set out broader interpretations of revised labour legislation.

Political debate recorded in Alberta *Hansard* documents government and Opposition interpretations of labour law.[17] *Hansard* contains detailed debate on Bill 22 which is especially helpful in understanding differences in Bill 22 at first reading and then at third reading. Spontaneity is generally not a feature of parliamentary political discourse: statements are planned and formulated prior to meetings and are frequently read from pre-prepared texts (see Dijk, 1993). Presumably scripts help avoid "errors" in interpretation and see that the party's view point is adequately communicated. In reference to parliamentarians, Dijk (1993: 67) notes:

> they do not speak merely to argue for or against a bill or policy, or other political activities, they also make official statements that reflect party position, which are to be inserted into the records and which may be quoted by the news media.

During the review process statements made in the Alberta Legislature were often quoted in newspaper articles. Sometimes such quotes formed the basis for whole articles. Newspapers and magazines—the *Edmonton Journal*, the *Edmonton Sun*, the *Globe and Mail* and the *Alberta Report*—generally served as important sources for tracking contextual developments, such as relevant labour disputes. Secondary source materials such as academic papers were especially useful in providing accounts of developments in labour relations policy which I present in chapter two.

The chapters that comprise this dissertation present analysis of the textual materials in a chronological order. This reveals how interpretations are constructed and reconstructed over time, as well as how they influence the production of legal provisions at specific time points. To understand the differences in legal clauses that appeared in the *LRA* and Bill 60, for example, I examine texts in the period in which the former became problematic in 1986[18] through to the introduction of the Bill 60 in the Legislature in Mid-1987. In chapter four, relying primarily on newspaper accounts, I examine how the *LRA* came to be viewed as problematic. In chapter five I examine the submissions on the *LRA* and then set out how these interpretations were taken up first in the LLRC's *Final Report* and then in Bill 60. In chapter six I consider reactions to Bill 60 as set out in the second set of submissions to the Minister. In chapter seven I consider how interpretations of Bill 60 later influenced the contents of Bill 22 and how political debate on this legislation prompted further amendments.

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[17] The "record" of political debate does not always provide a verbatim account of what was said, since the speaker has the ability to alter or strike out her/his comments from official transcripts.

3. Analyzing Discourse

In the next section I consider how to conduct an inquiry based on texts. I begin by reviewing a popular quantitative method for textual analysis: content analysis. I outline a number of problems especially in its assumptions about meaning. Next I turn to narrative as a research method. I provide a brief review of approaches to identifying narrative that have emerged within the field of literary studies. I then examine the method presented by Polkinghorne (1988).

a. Content Analysis

The analysis of text can take a number of forms. Content analysis is an accepted quantitative approach to the analysis of text that is believed to provide "the objective, systematic and quantitative description of the manifest content of communication" (Berelson, 1952: 18). The researcher generates a set of analytic categories[19] which serve as referents—markers that are used to discern what is relevant and thus what should be counted and what should not. Content analysis has been attacked for its lack of a firm theoretical grounding and for drawing inferences about the text that are perceived to be "trite" (Silverman, 1993: 59). Meaning is the object of this method, though a theory of meaning is often not provided. Typically, as Berelson (1952: 19) notes, the content analyst assumes that "the "meanings" which he [or she] ascribes to the content [...] correspond to the "meanings" intended by the communicator and/or understood by the audience". Meaning is assumed to be simple, clear and objective. Any shift or ambiguity in meaning is treated as problematic, and not as something that is potentially of theoretical interest. It also requires that the researcher count the occurrence of pre-specified categories without elaborating the repeated category's significance. In light of these theoretical concerns I do not employ content analysis.

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[18]. To understand the ideas and interpretations that were presented during this time it was also necessary to reference prior texts such as Bills that had been introduced in 1983 to amend the *LRA*.

[19]. These are based on hypotheses regarding content that are to be tested in a study.

b. Inductive Approaches to Narrative Analysis

The aim of structural narrative analysis is to identify the deep structures underlying a story or body of stories (e.g., Propp). Contextual details are viewed as superfluous and their importance is discounted. In this chapter, however, I have argued that context is critical to meaning since changes in context (in the accompanying chain of signifiers) can have either subtle or dramatic implications for the meaning that gets produced. I do not therefore attempt to impose any pre-established typology of narratives. Polkinghorne (1988) contends that there is no single typology to describe plots or narrative themes. Instead I examine how narrative discourse emerges from the way that individual sentences and the events that they describe are linked together to produce meanings greater than they would otherwise produce on their own.

In this study I undertake a comparative approach to narrative. I use comparison not for the purposes of isolating structural forces that account for change as in the work of Skocpol (1979) but to identify common themes that run throughout debate on labour law and to understand how, and at what point, these interpretations change. Polkinghorne presents an example of the hermeneutic techniques required to identify patterns in stories. He writes:

> Comparing two reports, "I approached the phone to call her for a date, but my stomach became so tense I couldn't pick up the phone, so I ended up not making the call and went back and watched TV for the evening," and "I saw this job advertised that really looked exciting, I was going to apply but I thought they would probably get a lot of better applications and it wouldn't be worth the effort" yields a number of possible themes. For example both include initial attraction to a goal, followed by retreat from pursuing the goal. Perhaps they experienced the debilitating thought that they might be rejected if they exposed themselves by asking for what they wanted [...] These would have to be held as possible descriptions until further information was given (Polkinghorne, 1988: 177).

In this approach categories are not imposed on the narrative accounts but emerge from a movement between the data and the emerging description and from the process of comparison. This resembles Glaser and Strauss' (1967) method of "constant discovery" with its "emergent conceptualization". Polkinghorne's (1988) example of narrative data analysis involves a comparison of two personal narratives. Events, however, do not need to be recounted in the first person to qualify as narratives. In this study personal experience is cited with some frequency in public submissions, but in other texts, this is not the case. In government reports, accounts of conditions and events appear to lack a point of view. It still remains possible to examine how context and events are woven together to produce narratives and to then identify patterns across accounts.

Presenting narratives in a thematic format rather than as discrete entities serves a number of useful purposes. It shows the patterned nature of discourse on labour law. It also makes it much easier to track changes in narrative accounts over time. I can trace threads of ideas to see how they are woven and rewoven into debate on law and I can see how debate is redirected at specific points. I can establish how the economy, one of four broad narratives themes that I have identified in this study, was presented at specific points in time and how these understandings shaped legal outcomes. I argue that narrative accounts are used at various points to identify "flaws" in legislation and as a basis for constructing proposals for legal change. In this way, narrative presents a means of linking the law to its discursive context and of revealing the social nature of legal provisions. In the next section I provide an overview of the narrative themes that I have identified in my analysis of the textual data.

4. A Preview of the Narrative Themes

a. Narratives on the Legitimacy of Trade Unions and Collective bargaining

Ideas about the legitimacy of trade union and collective bargaining have changed considerably over the last century of so. The law has not always recognized trade unions as legitimate organizations or collective bargaining as a legitimate activity. In the nineteenth century union activities were considered a criminal conspiracy and a restraint of trade. In 1873 legislation was introduced that allowed workers to form unions. In the decades that followed the question of legitimacy revolved chiefly around the issue of "union recognition". Though employers were free to join unions, employers were not legally obliged to bargain collectively with such organizations. Generally unions had to rely on their own bargaining strength to pressure employers into negotiations. During and after WWII Canadian jurisdictions adopted legislation that brought union recognition under the purview of government labour boards. Labour boards issued unions with certificates entitling them to bargain on behalf of workers in a bargaining unit. Employers were also obliged to bargain in good faith with such unions. Though unions have acquired legitimacy in the law, employers have continued to resist unionisation and collective bargaining. More recently, especially in the United States, there have been concerted efforts by employers to remain "union free" through anti-labour practices.

Throughout the dissertation I will illustrate how elements of the union legitimacy theme were manifest in debate during the Alberta labour law review. Company resistance to unions emerged as an issue in the 1986 Gainers strike. Labour interpreted actions taken by Gainers management as an intent to engage in "union-busting". Later in their submissions to the Labour Legislation Review Committee (LLRC), labour and its supporters used union legitimacy to demand specific changes in the legislation. For instance the Committee was urged to recommend the inclusion of a preamble affirming unionisation and collective bargaining. There were also demands for first contract arbitration that would prevent anti-union employers from attempting to thwart a newly certified union's efforts to secure a collective agreement. I also show how concerns about union legitimacy were used to identify "problem" clauses in Bill 60. Labour, for example, insisted that the proposed communication and education provisions were "anti-labour" because they represented an attempt to circumvent a trade union's exclusive authority to represent its members. I also show how concerns about legitimacy—in narratives on the "Americanisation" of Alberta law—were used by the New Democrats in 1988 to oppose Bill 22.

b. Narratives on Rights

A century ago employers had considerably more discretion in setting terms and conditions of employment and in the way it managed labour. Trade unions were more tenuous organizations then and had few protections in state law. Since this time, but especially since WWII, labour relations have become increasingly subject to legal regulation. As a result employer discretion has been restricted considerably while workers have won certain guarantees. Canadian labour's claims to rights is a fairly recent phenomenon and can be traced to labour policy developments in the United States. Previously Canadian labour law had been oriented to dispute avoidance and resolution. The *National Labour Relations Act* (*NLRA*), or *Wagner Act*, which was enacted in 1935, was very influential in Canada.

The *Act* expressly stated that workers had rights to self-organization and to bargain collectively, rights which labour subsequently began to demand in Canadian jurisdictions. Rights are now a common and accepted feature of labour relations discourse.

In the dissertation I show how rights are used by both employers and trade unions to identify flaws in legal doctrine. Labour is concerned about an array of rights: to organize; to bargain collectively; to picket; to strike; and so forth. I demonstrate how labour appeals to these ideas to identify flaws in legal doctrine and to support its demands for reform. Employers meanwhile are concerned with their right to continue business operations during a work stoppage and the right to be able to enter business premises. Initially employers appeal to these themes to explain why labour's demands for changes to the existing legislation are unacceptable. Employers also use narratives on "individual" rights as well as broader narratives on "democracy" to press for changes in the area of certification. Following the introduction of Bill 60 employers deploy narratives on rights to identify the Bill's anti-employer provisions. In the final stages of the review process New Democrats used narratives on "constitutional" rights (as set out in the Canadian *Charter of Human Rights*) to challenge the revised picketing provisions that appear in Bill 22.

c. Narratives on the Economy

Understandings of the functioning of the economy have played an important role in shaping what constitutes acceptable labour policy. In chapter three I review how *laissez-faire* conceptions of the economy were used to prohibit collective organization in the nineteenth century and how the Great Depression proved to be a critical factor in the enactment of American New Deal labour legislation. I also examine the role that economic recession in the Alberta construction sector played in the introduction of Bill 110 in 1983. I also consider how the recent concerns about Canadian business' ability to remain "competitive" have prompted a rethinking of the *Wagner*-based approach to labour relations.

Narratives with an economic theme were also a salient feature of debate on Alberta labour law. In their submissions to the LLRC employers issued predictions about the deleterious consequences that labour's demands for change for the Alberta economy. There were concerns about divestment, and impaired "flexibility" and "competitiveness". Later I show how employers used narratives on the economy to attack revisions that had been proposed in Bill 60. Employers explained that the changes would increase "costs" and reduce employment "flexibility", two developments that they also expected would compromise Alberta's "competitive position".

Employers also began to present the proposed revisions in narratives on "free trade".

Changes in the economy, especially the growth in competition, were used by the Alberta government to support its demands for a new approach to labour-management relation. Rather than seeing each other as opponents in negotiations, the government urged the parties to treat each other as partners, sharing a "commonality of interest". Adversarial relations were portrayed as counter-productive while more co-operative and consensual labour relations, of the type that existed in West Germany and Japan, were held out as the new way. In doing so the Alberta government had drawn on wider narratives about the need to rethink the existing labour relations framework.

d. Narratives on the Role of Government

The role of the government in labour relations has remained an important theme in debate on labour relations. In the nineteenth century the government played a very limited role in employment matters. The idea that government should play a more pro-active, formal, yet neutral role in labour relations (specifically dispute resolution) emerged at the turn of the century during periods of labour unrest in Canada's utility industries. This thinking culminated in federal conciliation policy. Under conditions of labour crisis government intervention also became associated with the protection of the "public interest". Protecting the public interest remains an important theme in discourse on labour relations and a frequently cited rationale for government interventions of various kinds.

The government's role in labour relations was a feature of debate throughout the Alberta labour law review process. This theme was especially salient in both union and employer submissions to the Minister on Bill 60. Both constituencies, for example, claimed that new provisions designed to improve communication and education constituted undue government intervention and "interference". Both called for a more "voluntarist" approach. I also show how narratives on excessive government were used to interpret a 1988 illegal strike by Alberta nurses and how narratives on "excessive government power" were used by the New Democrats to attack provisions in Bill 22.

III. Narrative and the Development of Canadian Labour Policy

A. Introduction

Before I present my analysis of the 1986 Alberta labour law review I will first provide some historical background on labour relations and labour law developments in both Canada and Alberta. Though it is not my purpose to provide an exhaustive account of labour relations in these two jurisdictions, the materials should allow the reader to locate the Alberta review in a broader socio-historical context. I have focused on a number of critical junctures in Canadian labour history where labour policy was revised, reflecting a new way of conceiving labour relations. I also provide details on events that are referenced by employers, political parties, trade unions and others in their narrative accounts of events and labour law during the 1986-88 Alberta review. I focus on events in Alberta in the late 1970s and early 1980s as these are drawn into public debate with considerable frequency throughout the review initiative. In the discussion that follows I will flesh out narratives concerning: trade union/collective bargaining legitimacy; the role of government and third party intervention; rights; and the economy.

By organizing the historical materials in terms of narrative rather than presenting them in a simple chronological fashion I am able to highlight how certain ideas have played out over time. Presenting developments in this way also highlights the contingency of these ideas and allows me to show how interpretations of labour law during the 1986-88 review are linked to, and shaped by the past.

B. The Legitimacy of Trade Unions and Collective Bargaining

1. The Private Employment Contract and the Legitimacy of Trade Unions.

Canadian labour law tells an interesting story about employment relations and the acceptability of trade unions. Provisions contained in nineteenth century Master and Servant legislation[1] did not recognize trade unions or collective action. Like the British legislation after which it was patterned, Canadian employment policy was built around the idea of the private employment contract, where individual workers were presented as freely entering into agreements with employers. The sanctity of the private contract was reinforced by the common law doctrine of criminal conspiracy, which had also emerged in Britain[2]. Any attempts by workers to join together to improve wages and conditions of work through strike action was deemed to be a criminal conspiracy in restraint of trade. Trade unions, however, continued to develop notwithstanding the law and strong employer resistance.

A rethinking of the criminal conspiracy doctrine occurred in the early 1870s in the context of labour unrest. Conspiracy charges brought against a number of Toronto printers in 1872 served as the catalyst for legal change.[3] The charges had proven very unpopular with the public and revealed considerable support for "the right of workmen to unite for legitimate purposes" (quoted in the *Ontario Workman* cited in Russell

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[1] The use of the terms master and servant is itself suggestive of a fundamentally unequal relationship. One party was expected to submit to the authority of the other, a view that was reinforced by the law's contents. Where, for instance, a worker was in breach of his contractual obligations—he had refused to work, to "obey" orders, or had fled his employ—he would then be liable to criminal prosecution (*Master and Servants Act* (1847) quoted in Russell (1990)).This inequity was seen to befit the parties' respective characters and place in society. Such legislation assumed that employers were reliable but that employees were typically irresponsible and should be made to mind their betters, both as a matter of social propriety and to maintain the nation's industrial output (Pentland, 1979a: 11). The penalties meted out to the two parties for violations of the act also reflected these differences in social standing and authority. Typically workers who left their jobs prematurely were subject to prison sentences, while employers who failed to fulfill the terms of a contract might be subject to "mild fines" (Pentland, 1979a: 11).

[2] The British precedents were the 1824-5 anti-combination Acts (Russell (1990)).

[3] In 1872 an association of employers in the printing industry, under the auspices of George Brown, brought criminal conspiracy charges against 24 Toronto printers for their role in a strike for a shorter, nine hour work day. The arrest of the printers, however, generated considerable public sympathy and shifted public attention to the common law under which they had been prosecuted (Russell, 1990). The arrests prompted demonstrations and underscored the need for legal reform. The Dominion government responded expeditiously with a reform initiative, which was modeled on British legislation.

(1990: 41)). The Dominion government also expressed support for change. Prime Minister John A. MacDonald claimed that the law was anachronistic:

> ...The unwise and oppressive action pursued towards some of the workingmen of Toronto in causing men to be arrested as criminals, forced upon my attention the necessity of repealing laws altogether unsuited and unworthy of this age... (Quoted in Russell, 1990: 46).

Later in 1873 the government enacted the *Trade Union Act* which relaxed restrictions on unions and collective action[4], but by no means affirmed unionisation (D'Aoust and Delorme 1981). Companion legislation[5] to the *Trade Union Act* also set out a series of union activities that were prohibited (Russell 1990).

2. Trade Union Legitimacy and Union Recognition

Though unions were no longer illegal entities, they were still faced with the task of obtaining recognition from employers. Generally employers refused to grant recognition unless the union had sufficient bargaining leverage to compel the employer to engage in negotiations. This often resulted in recognition strikes. The issue of union recognition (including the voluntary dues "check-off"[6]) was a central issue in the 1906 Lethbridge miners strike a dispute which led to a rethinking of labour policy at the federal level (Russell, 1990). Towards the end of the nineteenth century the government had begun a practice of dispatching officials to help disputing parties settle their differences (Caragata 1979). This role was formalized in 1900 with the passage of the *Conciliation Act*. Government officials believed that the Lethbridge strike had highlighted the weaknesses of its conciliation policy in avoiding work stoppages. In 1907 the Federal government enacted the *Industrial Disputes Investigation Act* (*IDIA*) which remained Federal policy until the mid-1940s.

Conciliation necessitated a minimal and temporary degree of union recognition by the employer while the parties participated in the resolution proceedings (Woods, 1973). The *IDIA*, however, made no provisions compelling employers to recognize and engage in collective bargaining with unions. Nor did the law provide workers with any degree of protection against employer efforts to thwart unionisation. Workers could be fired at will, blacklisted and forced to sign "yellow dog" contracts, in which they agreed not to join trade unions. Employers were also free to undermine union leverage by hiring replacement workers (Jamieson, 1968). Where there was support for the union, employers could simply refuse to negotiate and continue to deal with the employees as it had before, or to recognize a rival company union (Carter 1982: 34-35).

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[4]. This led to a proliferation of union locals, especially in the West. The number of union locals in Canada increased from 192 in 1891 to 582 in 1901 (Pentland 1979b: Table 1, p. 56)

[5]. *An Act to Amend the Criminal Law Relating to Violence, Threats and Molestation.*

[6]. A system where the employer agreed to collect union dues from those employees who had agreed to make such payments to the union.

Developments in American labour law in the 1930s had a significant impact on the way that union recognition would be handled in Canada. Obtaining union recognition was also a struggle for American labour. An assumption of the *Norris-LaGuardia Act* was that workers were "commonly helpless to exercise actual liberty of contract" (Millis and Brown, 1961: 20). New Deal legislation declared that a worker had the freedom of "self-organization and designation of representatives of his own choosing" (Millis and Brown, 1961: 20). American labour interpreted this statement as a call to organize[7] but employers disagreed and refused to grant union recognition[8]. The outcome of these conflicting views was marked labour unrest[9]. Subsequent legislation contained similar, and stronger policy statements[10] but it was not until the passage of the *National*

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[7]. The *National Industrial Recovery Act* (*NIRA*) prompted union organizing campaigns across the country. "The President", workers were informed, "wants *you* to unionize" (Brooks, 1971). This was the slogan used by the United Mine Workers to organize workers in the mining areas of Kentucky, West Virginia, Pennsylvania and Illinois and garment workers' unions in New York, Philadelphia, Cleveland, and Chicago. For a discussion of labour unrest that followed the passage of the NIRA, see Brooks (1971, Chapter 13).

[8]. In many instances employers took steps to institute company unions, action that they believed was not in contravention of the legislation (Millis and Brown, 1961). In the spring of 1934 some ten million workers—a quarter of the American industrial workforce—worked in establishments with company unions (Brooks, 1971: 170).

[9]. Such disagreement culminated in a wave of strikes in 1933-34. The President responded to the conflict by establishing a National Labour Board. In 1933 President Roosevelt established a National Labour Board, to be headed by Senator Robert F. Wagner. The Board was charged with settling disputes deemed to interfere with the mandate of the NIRA through such methods as conciliation, mediation and arbitration. Subsequent Executive Orders and Resolutions would vest the Board with additional powers and duties. A year later an Executive Order granted the Board the authority to hold elections for the selection of employee representatives and also allowed it to notify the National Recovery Administration or the Department of Justice of employers who were in violation of the Act so that "appropriate action" could be taken. The Board's responsibilities extended not only to dispute resolution, but also to quasi-judicial tasks such as the interpretation and enforcement of section 7(a), a combination which to prove difficult to manage (Millis & Brown, 1961).

[10]. The *National Industrial Recovery Act* (NIRA) was enacted in 1933 as part of FDR's New Deal. Section 7a of the *NIRA* borrowed heavily from Section 2a of the Norris-LaGuardia Act. The former read, in part, that "employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection (Metz & Jacobstein, 1947: 12)

Labour Relations Act (*NLRA*) in 1935 that law provided for mechanisms that would enforce union recognition[11]. Under the *NLRA*, or the *Wagner Act* as it is more commonly known, disputes over union recognition became a matter for the National Labour Relations Board (NLRB). If there was majority support among the workers for union representation the NLRB was authorized to *certify* the union as the exclusive representative of the employees. The employer was also obliged to negotiate with the union in good faith. Though union recognition had been transferred to a government agency, labour's struggles to obtain recognition were not at an end. American employers anticipated that the *Wagner Act* would be declared unconstitutional and in the mean time remained unwilling to recognize or bargain collectively with trade unions. Contrary to employer expectations the constitutionality of the *Act* was upheld by the U.S. Supreme Court, and in the years that followed American union density increased dramatically.

3. Union Certification in Canada

Soon there were demands for *Wagner*-based legislation in Canada. Though willing to impose conciliation measures, the Canadian government remained unprepared to enact legislation that would legally oblige employers to accept unions. In the years following passage of the *Wagner Act* the United States experienced unprecedented levels of strike activity as unions pressed their case for recognition and as employers continued to refuse them (MacDowell, 1978). In Canada, eager for industrial peace, the King government had little interest in enacting legislation that it associated with greater, rather than reduced labour strife. In the context of WWII, growing labour militancy over the issue of union recognition and surging support for the social democratic Cooperative Commonwealth Federation (CCF), the Dominion government reconsidered its position on union recognition and collective bargaining and in 1944 enacted Privy Council Order 1003 (P.C. 1003) which provided for American style union certification. In the years following the war, the provinces also began to enact statutes modeled on the wartime Order.

In the post-war years union density in Canada increased dramatically. In the context of the new legal framework, and pressure from organized labour and the CCF, Canadian employers generally came to accept and accommodate trade unions rather than mounting campaigns to undermine and destroy them (Adams, 1989). Taylor (1995) contends, however, that in Alberta the post-war there was no such "compromise" between labour and management. I consider the case of Alberta in the next section.

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[11]. Previously there was little the Board could do to compel employer compliance as its powers of subpoena were limited to election matters.

4. The Legitimacy of Trade Unions and Collective Bargaining in Alberta

a. Company Unions

Under the *Wagner Act* company-installed unions were prohibited. In 1947 Alberta enacted the *Alberta Labour Act*[12] which included many of Wagner's principles and measures. Section 59 of the *Act* set out the procedures for Board certification and indicated that an employer who refused to bargain with the certified agent of the employees would "be guilty of an offense and liable on summary conviction to a fine" (s. 60(4)). The *Act* also banned company sponsored unions (s. 63). In practice, though, the law did not eliminate employer resistance or company unions. This was due in part to the Alberta government's position on labour unions, especially under the leadership of Premier E. Manning. Manning did not take a very positive view of labour unions, a position that was very much coloured by the prevailing post-WWII Cold-War discourse on communism and radicalism (Finkel, 1988). Labour agitation was interpreted as a destabilizing influence and as something that should be eradicated. Throughout the 1940s and 1950s the Alberta Board of Industrial Relation's (BIR) interpretation of the *Labour Act* and general lack of sympathy to labour's concerns facilitated the proliferation of company unionism[13], particularly in the energy sector (Caragata, 1979). Compared to company organizations, independent unions were in the Board's view, too inflexible. Union complaints of coercive employer practices were interpreted by the Board as evidence of this inflexibility, and were often dismissed as a result (Finkel, 1988). The Alberta Federation of Labour (AFL) contended that the Board's position was at variance with the spirit of the *Act* and that union recognition had become "a big joke" (Finkel, 1988: 141). The government's unwillingness to take labour's concerns seriously and to curtail employer coercion is reflected in the province's union density rates, which have consistently trailed those in other Canadian jurisdictions. In 1987, Alberta reported the lowest union density rate in Canada (25.7 per cent) (Krahn and Lowe, 1993: 247, figure 7.3).

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[12] S.A., 1947, c. 8.

[13] See Carataga (1979: 133-136) for a discussion of Social Credit's role in the growth of company unionism in the energy sector.

The idea that union agitation was seditious also influenced the way that organized labour in Alberta approached the provincial government. Earlier in the century Alberta labour had a propensity for radicalism, reflecting the influence of the militant miners' unions. As the miners' influence waned, however, so did labour's militancy (Finkel, 1988). Alberta labour's willingness and ability to challenge the BIR's interpretation of the *Labour Act*, and amendments to the *Labour Act* that limited union organizing activities[14] were restricted by Cold War representations of labour. The Alberta Federation of Labour (AFL) eschewed activities that could be construed as subversive and so might undermine its already limited legitimacy. Instead it resorted to a policy of "friendly persuasion" which consisted of lobbying legislators for better laws though presentations and letter writing campaigns (Finkel, 1988). Rival unions affiliated with the Canadian Congress of Labour (CCL), a federation of industrial unions which later became the Industrial Federation of Labour of Alberta (IFLA)[15], set out to politicize labour legislation in the 1948 election. Mindful of the power of Cold War labels to thwart its legitimacy and its acceptability to the government, the IFLA also took steps to purge its "subversive" elements. Throughout the 1950s the Alberta labour movement shrank from militancy as is evidenced by provincial strike statistics (see Leadbeater, 1984, Table I-7: 61).

In 1960 the Social Credit government introduced restrictive amendments to the *Labour Act*[16] which, for instance, prevented certain groups of workers (domestics and farm labourers) from joining unions and bargaining collectively (s. 4). The changes were not welcomed by the restructured Alberta labour movement (in 1956 the AFL and the IFLA had merged into a larger Alberta Federation of Labour (AFL)). Labour interpreted the measure as an attempt by the government to render the union movement impotent (Finkel, 1988). The AFL requested that the government rethink the legislation, and asked also that it act on its long-standing concerns about company unionism. Labour's appeal went unheeded, however, and the law was enacted. By the close of the 1960s organized labour's antipathy for Social Credit and its labour policies had mounted into open hostility, though this was still not translated into campaigns for labour reform (Finkel, 1988). In its desire to appear respectable, Alberta labour had curtailed its political activities. As a result it had been unable to pressure the Alberta government to enforce the *Labour Act*'s provisions on company unionism or to prevent the introduction of amendments that began to limit unionisation and collective bargaining.

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[14]. Union activists were not permitted to organize employees at their place of work without first obtaining the employers' permission (*An Act to Amend the Alberta Labour Act* , 1948, c. 76, section 66(4)).

[15]. Unions with affiliation to the IFLA included Alberta locals of the United Packinghouse Workers of America, the United Mine Workers, the Canadian Brotherhood of Railway Employees and the Mine, Mill and Smelter Workers. The IFLA was affiliated with the American-based federation of industrial unions, the Congress of Industrial Organizations (CIO).

[16]. *An Act to amend The Alberta Labour Act*, S.A., 1960, c. 54.

b. Bill 110, Spin-offs and the 25 Hour Lockout

I now review events in the early 1980s, as employer resistance to unions in Alberta was made manifest in practices known as spin-offs (or doublebreasting) and the 25 hour lockout. In 1982 contractors in Alberta's construction industry made concerted efforts to escape the terms of their contracts. In 1982, just before the effects of the economic downturn were felt in Alberta, contractors had reached agreements with construction trades that included significant wage increases reflecting the economic health of the sector. Faced with quite different economic circumstances contractors now claimed that the 1982 agreements were unreasonable and needed to be renegotiated. Labour, however, refused to make concessions and the contractors remained bound to their agreements.

In response, the contractors pressured the Conservative government to repeal a provision in the *Labour Relations Act* that prevented them from establishing or "spinning off" non-union companies and thus a means to avoid the obligations set out in their collective agreements. Section 133 stated that:

> ...when, in the opinion the Board, associated or related activities or businesses, undertakings or other activities are carried on under common control or direction by or through more than one corporation, partnership, person or association of persons, the Board *may* declare the corporations, partnerships, persons or associations of persons to be one employer for the purposes of this Act (emphasis added)

In 1983 the Alberta government introduced Bill 110[17] which relaxed constraints on spin-offs and provided a way for employers to reclaim their freedom to contract. Bill 110 received Royal Assent in November, 1983, but the legislation was never proclaimed into law. Though the law was later rescinded, a number of ALRB decisions provided employers with a way around section 133. In 1982, for example, the ALRB decided that where a unionized construction company had converted to a "project management" operation, the collective agreement would not be applicable to the new entity on the grounds that it did not hire employees directly (see Fisher and Kushner (1986) for additional details).

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[17]. *Labour Relations Amendment Act*, S.A. 1983, c. 82.

Later in 1984 when many of the 1982 construction agreements were due to expire, contractors tried to terminate agreements[18]. The lapse of the expiry date, however, did not automatically void the contracts. Under Section 80 (2) of the *Labour Relations Act* the parties could agree to extend the terms of employment specified in a collective agreement[19], in part or in full, while bargaining continued. Contractors attempted to escape such "bridging clauses" by unilaterally declaring the contracts null and void.[20] The Canadian Labour Relations-an Alberta Association (CLR-A), which represented contractors in negotiations, argued that by providing "due notice"[21] it was fully within its rights to cancel the agreement, notwithstanding the bridging arrangements. On April 30, the ALRB ruled that the CLR-A was not authorized under its registration certificate to negotiate termination clauses, and as a consequence the bridging provisions remained effective until a strike/lockout.[22] Subsequent to the ruling a number of contractors held and carried lockout votes, which voided their collective agreements.[23] The following day workers were invited to return to work at lower work rates, a practice that became known as the "25 hour lockout".

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[18]. Fisher and Kushner (1986: 790) suggest that it was the contractors' preference to reach a competitive collective agreement with construction unions rather than operating non-union, and that ending collective agreements was merely a strategy to extract concessions during bargaining.

[19]. The agreement could be continued 'for any period less than one year' or 'for an unspecified period' (Section 80(2)(a) and (b)).

[20]. The first termination initiatives were launched in 1983, following the February 28 expiration of a contract between the Alberta Roadbuilders' Association (ARA) and Local 955 of the International Union of Operating Engineers. Following the appointment of a mediator and an unsuccessful March 19th strike vote the ARA declared that the collective agreement was no longer in effect. This was owing to Article 18.00 of the collective agreement which extended the force of the agreement beyond the expiry date during negotiations "until the procedures in the *Labour Relations Act* have been exhausted". The union disputed the ARA's interpretation of this provision. In a July ruling favourable to the union, the Board found that the procedures had not been fully exhausted and therefore the collective agreement was still in force. The Association challenged the decision, and Court of Queen's Bench, Judge Dea ruled that article 18 was inoperative and invalid, and ordered the Board's decision quashed. The Dea decision, however, was subsequently overturned by the Court of Appeal. In the mean time the Association had failed to take a lockout vote, and had applied to the ALRB to determine once more the status of the collective agreement. In September the Board ruled that with the failure of the lockout vote the parties had "exhausted the procedures under the Act" and, therefore, the agreement was at an end. This decision was later upheld by the Court of Appeal. On April 30, 1984 seven contractor groups notified unions that their collective agreements would be declared null and void (*Alberta Report*, May 21, 1984).

[21]. In the case of CLR-Local 496 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry either party could terminate the agreement by written notice not less than 30 and not more than 90 days prior to April 30th, 1984.

[22]. This decision, however, was quashed in a certiori application to the Court of Queen's Bench.

5. The "New Industrial Relations"

More recently, and especially in the United States, ideas about trade unions have undergone a transformation. Employer accommodation and tolerance for unions that developed in the post-WWII decades has grown into open hostility. Union resistance lies at the heart of the "New Industrial Relations", a labour strategy that has enjoyed considerable appeal in the 1980s and 1990s (Barbash, 1988; see also Kochan, Katz and McKersie, 1986). No longer seeing a place for unions, American management has sought a "union-free" status, through either a process of "deunionisation" (e.g. closing down union plants) or through a strategy of "union avoidance" (i.e. avoiding unionisation to begin with). To retain such a status employers have devised more sophisticated approaches to thwart unionisation (e.g. hiring management consultants), involving both legal and illegal tactics. Such tactics moreover have been linked to union losses in union representation campaigns and the decline in U.S. union density rates (Freeman and Medoff, 1984).

6. Summary

In this section I have examined how views of trade unions and collective bargaining have changed over time. I began the discussion with an outline of common law approaches to trade unions. I then explained how with the legalization of trade unions (by the *Trade Union Act*) in 1873 unions were still faced with the task of obtaining union recognition from employers. In the 1940s Canadian legislation provided for the certification of trade unions. No longer a matter for the parties to work out alone, union recognition became a problem for government labour boards to settle. Such legislation, however, has not ended labour's struggle for legitimacy, as I will show later in my analysis of Alberta labour law review. In the post-WWII decades employers developed a tolerance for unions and collective bargaining, though more recently there has been a resurgence of anti-unionism. In the province of Alberta, union legitimacy has been more tenuous. In the immediate post-War decades Alberta's Social Credit government resisted trade unionism. More recently Alberta employers have engaged in a number of union avoidance strategies—spin-offs and the 25 hour lockout— developments that were to have significance in debate on the *LRA* in 1986.

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[23] On May 22nd, for example, the CLR on behalf of the mechanical contractors locked out 800 plumbers and invited them (without the union's sanction) to return the next day provided that they also accept a five dollar an hour reduction in pay (Alberta Report, July 2, 1984: 16), a practice that has become known as the "25-hour lockout". The plumbers' union charged that such unilateral action was in violation of the *Labour Relations Act* and on June 22nd the ALRB ruled that this was the case. The CLR appealed and the Board's decision was subsequently quashed, a move that was later upheld in the Court of Appeal.

C. Narratives on the Role of Government in Labour Relations.

1. Intervention and Voluntarism

A century ago, minimal government involvement in labour relations was the norm. This gradually changed as a result of a number of critical disputes in Canada's west. Labour disputes in a number of key infrastructural industries at the turn of the century made labour disputes and dispute settlement an important political issue. Though concerned that it lacked the legal authority to intervene in disputes without first acquiring the parties' consent, government began to take on a more proactive role in labour disputes (Webber 1991: footnote 15). Government officials, such as W.L. Mackenzie King, began to discuss the need for limited government intervention in "public utilities" disputes, industries upon which entire communities depended for essential services and goods. Casting itself in the role of a neutral, impartial peacemaker the government began to dispatch representatives to assist disputing parties. In the case of the 1899-1900 metal mining dispute in the Kootenay region of British Columbia, the Federal government dispatched Roger Conger Clute, a lawyer, to inquire into, and it seems to mediate a settlement (Ibid). Clute's efforts were a success, and in a report to the government, he recounted his methods and activities and called for their use in future disputes (Ibid). Shortly thereafter Clute was invited to draft new legislation: the *Conciliation Act*[24] of 1900.

The *Act* marked the beginning of a formalized role for the Federal government in dispute resolution. The legislation authorized the Department of Labour[25] to appoint a conciliator or board of conciliators in an effort to bring about a settlement either at one of the party's request or on the Department's own initiative. The *Act* did not compel the parties to participate in proceedings; since the legislation was based on the idea of voluntarism. Though the parties retained the ability to boycott the proceedings[26], there was an expectation that the pressure of public opinion would compel the parties to meet and reach an amicable settlement. A strike by car men on the Canadian Pacific Railway (CPR) in 1901 prompted passage of the *Railway Labour Disputes Act*[27] *(RLDA)* (1903) legislation which called for two stages of intervention. First a conciliation committee would attempt to help the parties reach a settlement. If this failed, the Minister could appoint a Board of arbitration to investigate and issue a non-binding public report. The *Act* provided for mandatory conciliation, though arbitration remained voluntary. The two stage method became a "basic feature" of Canadian dispute resolution policy (Woods 1973: 56).

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[24] S.C. 1900, c. 24.

[25] The Department was a creation of the Act and established to gather and to collect labour statistics.

Labour unrest in western Canada prompted further intervention in 1907. A 1906 strike by Lethbridge coal miners threatened to create a winter fuel shortage in the prairie provinces, prompting demands that the government step in and bring an end to a looming crisis. The dispute prompted the government to rethink the efficacy of its voluntarist conciliation framework. In 1907 Parliament enacted the *Industrial Disputes Investigation Act*[28] (*IDIA*) which was applicable to a limited number of industries such as mining and transportation.[29] The *Act* increased government intervention markedly by mandating conciliation (as long as this was the preference of one of the parties) suspending industrial action until the investigation process was complete.[30] Delaying the strike was a Canadian innovation and came to symbolize Canadian labour relations policy (Woods 1973: 56).

In 1925 the federal government's ability to intervene in labour disputes was reduced significantly by a ruling of the Judicial Committee of the Privy Council.[31] The Privy Council decided that labour relations were matters of property and civil rights, matters which fell under the constitutional jurisdiction of the provinces. Federal intervention in labour disputes that were deemed not to be of national consequence was judged to be unconstitutional. Though the jurisdiction of the federal government in labour relations had never been clearly defined, such matters had been treated largely as a federal concern (Woods 1973). Following the Council's decision Parliament amended the *IDIA* so that its coverage was in keeping with the Privy Council ruling. Provincial legislatures responded by either enacting laws modeled on the federal *Act* or declaring the federal *IDIA* to be effective in their jurisdictions. Alberta enacted legislation patterned on the *IDIA*.[32]

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[26] If both parties agreed, a settlement could be effected through binding arbitration, though this was a rarely, if ever, applied (Russell, 1990: 58).

[27] S.C., 1903, c. 55.

[28] S.C., 1907, c. 20. The full name of the Statute was *An Act to aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries connected with Public Utilities*. The *IDIA* was also known as the Lemieux Act after the Minister of Labour, Rodolphe Lemieux.

[29] The *IDIA* was applicable to employers with ten or more employees operating/owning mine property, a transportation or communication agency, or public utility, with the exception of the railroads (s. 56). The law could be made applicable to other disputes so long as both parties had agreed to this.

[30] Section 63 of the *IDIA* stated that: "It shall be unlawful to any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during a reference of such a dispute to a Board of Conciliation and Investigation..." (quoted in Woods, 1973: 57-58). The postponement of the strike was the centrepiece of the *IDIA*; it was a feature that rendered the law distinctly Canadian, attracting the attention of international observers (e.g. Selekman, 1927). At home, however, it was precisely this measure which elicited labour's antipathy, particularly that of its more radical elements in the West.

What was seen as acceptable government involvement in labour relations increased significantly with the adoption of *Wartime Labour Relations Regulations* (P.C. 1003) which in 1944 combined the principles of the American *Wagner Act* with Canada's existing conciliation framework. The legislation established a tribunal to administer and enforce the new provisions. It established a procedure for certification, required employers to recognize unions where there was majority support for unionisation, set out unfair labour practices and provided for remedies where parties had contravened the legislation. The legislation did not, however, seek to intervene in the outcomes of bargaining. This remained the voluntarist component of the new legislative framework.

2. Government Intervention and the Idea of a Public Interest in Labour Relations

Government intervention in industrial relations also coincided with the emergence of the notion of a public interest in labour relations, a concept that is still used by governments as grounds for legislative action (such as back-to-work orders). The view that the public was a "third party to industry" began to take hold in the late nineteenth century, in the context of labour disputes in a number of critical industries (Webber, 1991: 26). Government officials claimed that industrial action came at a substantial cost to public convenience and that it was its role, at least in certain "public utilities" utilities, to ensure that the public interest was protected. Using this reasoning government had rationalized its involvement in labour disputes and the development of its conciliation policy.

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[31] *Toronto Electric Commissioners* v. *Snider* , [1925] A.C. 396.

[32]. The *Labour Disputes Act* (1926) allowed parties to a dispute to apply to the Minister of Public Works to appoint a Conciliation Board. The Industrial Conciliation and Arbitration Act enacted in 1938 provided for a two-stage conciliation process (Conciliation Commissioner followed by a Board of Arbitration). The Act prohibited industrial action until the conciliation efforts had been concluded.

Narratives on the public interest were also advanced to legitimate government interventions in the post-WWII decades. In the 1950s British Columbia enacted legislation that called for compulsory arbitration when a strike was considered a threat to the public interest.[33] A similar initiative was adopted by the province of Alberta in 1960.[34] The legislation authorized the Lieutenant-Governor in Council to suspend normal collective bargaining regulations and to make parties in utilities and hospitals subject to a set of emergency provisions "in circumstances that life or property would be in serious jeopardy" (section 99). In subsequent revisions to the Alberta law, the provincial government took steps to broaden its powers with respect to emergency measures. Most significantly emergency provisions were extended from disputes in essential utilities and services to any private sector strike that was deemed to pose a threat to the public interest.[35] Changes introduced in 1970[36] empowered the government to declare a state of emergency during *any* dispute in which "life or property" was judged to be in "serious jeopardy" or where there was a possibility that the dispute would result in "extreme privation or human suffering".

In the 1970s and early 1980s the Alberta government invoked the emergency provisions contained in the *Labour Act* on a number of occasions.[37] Four days into a strike in July, 1977, the United Nurses of Alberta (UNA) were ordered to end their work stoppage and return to work. In November, 1980, shortly after the government had invoked the emergency provisions to suspend strikes by Calgary teachers and another dispute by the UNA,[38] the government introduced Bill 79—the *Labour Relations Act*[39]. Though the Bill did not call for change in the emergency provisions they were raised in debate by the NDP. Grant Notley (NDP) contended that the government's power to end strikes was excessive, owing to changes in the meaning of "emergency" in 1975. A dispute was considered an emergency when it was judged to have created "unreasonable hardship" rather than "extreme privation"— the wording in previous legislation.

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[33] The intervention resembled the "National Emergencies" provisions contained in the U.S. *Labour Management Relations Act*, also known as the Taft-Hartley Act which amended the National Labour Relations Act in 1947. Where a dispute was thought to "imperil the national health or safety" the President was empowered to refer the matter to a "board of inquiry" (s. 206). After receiving the Board's report the president could petition the appropriate court to enjoin the work stoppage Following the elapse of 60 days from the time of the court order, the President would make the board of inquiry's Report public. Within 15 days the National Labour Relations Board was required to conduct a secret ballot of employees on the employer's last offer. The president was then obliged to submit a report to Congress that included recommendations for action. Mueller (1949) contains a complete version of the *Taft-Hartley Act* (1947).

[34] *An Act to amend The Alberta Labour Act*, S.A. 1960, c. 54. section 99(1).

[35] Presently Alberta and British Columbia are the only jurisdictions that provide procedures for emergencies in the private sector.

[36] *An Act to Amend the Alberta Labour Act*, S.A. 1970, c. 63.

[37] The legislation was used to suspend strikes by the following unions: the Alberta Teachers' Association (ATA) in 1971, 1973, 1978 and 1980; the International Union of Elevator Constructors in 1973; Alberta Association of Registered Nurses in 1977; and the United Nurses Association (1980) (See Panitch and Swartz, 1993: Appendix I).

Opposition MLAs did not question the authority of the government to suspend a legal strike when the public interest was deemed to be in jeopardy. Notley argued that "One of the aspects of modern industrial society is that from time to time those work stoppage have to cease in the interests of the greater good" (*AH*, 1980: 1587). Notley claimed that the term "unreasonable hardship" was much too "vague" and had granted the government excessive powers (*AH*, 1980: 1585, 1587). There were also complaints that the government had ended strikes without first holding debate in the legislature. Such action, the NDs argued, did not constitute "responsible intervention" (Notley quoted in *AH*, 1980: 1586). The government maintained that prompt action (i.e. without having to recall members of the Legislature) was critical to the maintenance of social order and the prevention of "chaotic ferment" (Young quoted in *AH*, 1980: 1587).

Appeals to the public interest were also used in support of legislative initiatives in 1982 and 1983. In 1982 the government enacted legislation[40] (Bill 11) ordering striking nurses back to work, a method of ending strikes that had grown more commonplace in Canada (see Panitch and Swartz, 1993: 23). A year later the government introduced Bill 44, *The Labour Statutes Amendment Act*[41], which removed the ability of hospital workers, including nurses, from taking strike action. Proponents of the Bill maintained that its passage would mean the Alberta public need no longer contend with the "misery", "suffering" and "anxiety" caused by three nurses' strikes in five years (1978, 1980 and 1982). New Democrats opposed the restrictions by contending that the restrictions constituted a violation of labour's rights, an issue which I will address in the next section.

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[38]. The nurses defied the order and launched a legal challenge question. In the meantime the dispute was settled.

[39]. R.S.A. 1980, c.L-1.

[40]. *Health Services Continuation Act*, S.A., 1982, c. 21.

[41]. S.A. 1983, c.34.

3. Overview

Understandings of the government's role in labour relations have changed significantly in the last century. Government intervention in labour relations began informally in response to labour disputes in vital industries. This intervention later served as the basis for conciliation legislation. At first conciliation was strictly voluntary but later, as the policy was developed, participation in the procedures became compulsory. Until WWII government intervention was generally oriented to dispute avoidance and resolution. With the adoption of American *Wagner* style legislation during and after WWII Canadian governments increased their involvement substantially. In the post WWII period it became expected that government would perform certain duties (handle certification, provide conciliation and mediation services, etc.). Government's efforts in conciliation were facilitated by the developing notion that labour disputes in certain critical industries were not strictly private affairs because they had an important public dimension. Government presented itself as the guardian of the "public interest", and it has continued to use this claim to suspend and prohibit strikes.

D. Narratives on Rights

1. Rights for Labour and the Question of Balance

The chief aims of Canadian conciliation were not the protection of "the rights, liberties and prerogatives of the contending parties" but rather dispute avoidance and resolution (Jamieson, 1968: 53). The notion of rights for labour was, however, at the heart of American New Deal labour legislation. This is made clear in the *Wagner Act* in the preamble and in section 7 which reads:

> Employees shall have the *right* to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection (emphasis added).

The relaxation of anti-trust legislation was believed to have created an "inequality of bargaining power between employers and employees" (NLRA, section 1) that prevented workers from exercising their rights to organize and bargain collectively with employers. The *Wagner Act*, unlike previous legislation which had affirmed labour's rights[42], contained mechanisms that would enforce labour's rights. The Act set out employer unfair labour practices (ULPs). Employers were prohibited from interfering in the formation and administration of unions, and from providing unions with financial or other support. The *Act* also vested a National Labor Relations Board with various powers to ensure that worker rights were protected.

The federal government had resisted labour's demands for collective bargaining rights, but in 1944, against the backdrop of WWII and growing support for the CCF, P.C. 1003 adopted most, though not all of the features of the *Wagner Act*. P.C. 1003 contained no preamble so there were no statements affirming collective bargaining rights. The Canadian legislation did not appear to be based on the view that labour was at a relative disadvantage in terms of bargaining power vis a vis employers. This was evidenced by the inclusion of a set of ULPs for both employers and unions. The *Wagner Act* had made no provision for union ULPs since workers were assumed to be at a disadvantage and therefore incapable of coercion and discrimination. There was also a view that union ULPs would be used by American employers to circumvent the legislation, thereby undermining the equality of bargaining power that the law sought to establish (see Koretz, 1970: 297-99). By setting out both union and employer ULPs there was no sense that one party needed protection from the other in order to exercise its rights, but a belief that the parties were equals. This was a position that was later taken by the *Labour-Management Relations Act* which amended the American *Wagner Act* in 1947. The amending legislation was interpreted

> ...as reflecting a congressional intention to *treat employers and labor alike*; that is, the amended Act...was meant to be a neutral guarantor of equal rights or at least, of reasonably *balanced rights*...{Gross, 1985 #29: 12; emphasis added}.

Though Canada's P.C. 1003 did not adopt Wagner's approach to balancing rights, in more recent years Canadian jurisdictions have adopted legislation that recognizes the strong resistance that labour may encounter in exercising its right to organize and to bargain collectively (i.e., the inequality in bargaining power). First contract arbitration, which ensures that employers do not thwart a new bargaining agent's efforts to secure a first collective agreement, recognizes that workers need greater protections to be able to exercise their rights.

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[42] Similar statements appeared in prior legislation such as the *National Industrial Recovery Act* and the *Norris-LaGuardia Act* though there were no provisions for the enforcement of such rights.

2. The Right to Organize, Individual Rights and Democracy

There has been considerable debate concerning how best to guarantee workers' rights to organize. Debate has tended to focus on the merits of the different methods to assess employee support for union representation used in Canada and the United States. In the United States, in the Federal jurisdiction at least, union support must be demonstrated in a union representation vote before a union certificate can be issued.[43] In Canada, however, labour boards have traditionally relied on signed union cards as evidence of union support and have used votes as a secondary method where union support is judged to be equivocal. Some Canadian jurisdictions require "quickie" or pre-hearing votes especially in so called "messy situations" where there is evidence of employer coercion[44] (Craig 1990: 123). Such votes are held expeditiously so as to prevent employers from further infringing upon labour's rights.

Advocates of representation votes and the American system focus on the protection of individual rights and appeal to broader concerns such as democracy. Proponents of the vote present it as a way for individual workers to be protected from coercive (union) influences and as a means for them to express their true opinion. The period of electioneering preceding a vote is proposed as a means for employees to hear both the pros and cons of collective bargaining and to ensure that their decision is more informed and less biased. Union representation elections and votes are portrayed as inherently democratic and comparable to elections and voting in the political arena. Critics of the election/vote method claim that the approach ignores the effects of power inequities between employees and employers, as well as the dependence of employees in the employment relationship. The electioneering that occurs is also said to afford employers additional opportunities to coerce employees to vote against the union. In this way the voting method is believed to facilitate employer interference in union formation and to comprise worker rights.

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[43] . The Wagner Act provided the NLRB considerable discretion in assessing union support. The Board was authorized to "take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives" (s. 9(c)). For several years following the introduction of the Wagner Act the NLRB accepted union authorization cards as evidence of union support. After 1939, however, the Board began to rely on secret ballot elections. The enactment of the *Taft-Hartley Act* in 1947 removed the Board's discretion, and elections became mandatory.

[44]. In Nova Scotia pre-hearing votes are mandatory in all applications

Claims about democracy have been challenged by proponents of the union cards system. Weiler (1983) has argued that employers should have little involvement in union representation because it places them in a conflict of interest. Allowing employers to present a case against unionisation, he insists, bears little resemblance to a political campaign since it is tantamount to:

> the role of a foreign government in an American election. Canada, for example, has a significant interest in which party is elected to govern the United States; selection of one party rather than the other may make life considerably easier or more difficult for the Canadian government in negotiations over defense, trade...and so on. Yet no one would argue that Canadian government agencies should therefore have a right to participate in an American election campaign in order to try to persuade United States citizens to vote for a party that would be favourable to Canadian interests (Weiler 1983: 1814).

To make their case, opponents of the compulsory vote have cited labour's declining success in U.S. union representation elections as evidence of employer interference and the failure of the American National Labour Relations Board (NLRB) to respond adequately to union complaints. This has led to the conclusion that rather than promoting industrial democracy, the American system undermines it. For these reasons union cards and the pre-hearing approach (where there is a vote without a protracted election campaign) are on the whole believed to a more favourable climate for unionisation.

3. The Right to Organize in Alberta

The issue of assessing and protecting employee opinion on unionisation was raised by members of the Opposition during debate on Bill 79—the *Labour Relations Act*—in 1980. The debate reflected labour's concern about the difficulties that it experienced in union organizing. During debate Grant Notley, for the New Democrats, made a case for reducing the minimum threshold of union support required to support an application for certification to some level below 50 per cent. Manitoba, he noted, required that union certification applications be accompanied by evidence of at least 35 per cent support (*AH*, November 14, 1980: 1521). The Minister of labour, Les Young, responded that any such reduction in the support threshold would be "arbitrary" (*AH*, November 14, 1980: 1516). Though he disagreed with the Opposition's demands Young maintained that the certification provisions were in need of some clarification. Proof of membership in good standing, and application for union membership (through signed authorization cards and payment of a two dollar membership fee) were deemed to provide "clear...evidence" of union support (Young quoted in *AH*, November 14, 1980: 1516). A third method, however, whereby workers indicated in a written petition their support of the union, was deemed to provide a less accurate gauge of worker opinion. As a result, even when a majority of workers had submitted petitions the Board was to conduct a representation vote (s. 38(2)(b)). The Board was also authorized to hold a representation vote in other instances where it deemed evidence of support to be equivocal. Though the changes affecting written petitions represented a preliminary step toward the American system of mandatory voting, the Minister was careful to note:

> that it is possible to have certification without a vote of the employees. The vote is only there when there is a question about the majority or a question as to the clarity of the demonstration of interest by the members (*AH*, 1980: 1525).

For the time being, certification on the basis of signed cards was retained.

Bill 79 also included provisions that were designed to protect from coercion during unionisation. Under existing legislation, where the Board had found evidence of an unfair labour practice during organizing campaigns, it was empowered to issue an order requiring that the prohibited activity cease and desist. It was also vested with certain powers to "make right" including *inter alia* reinstatement and payment of lost wages, where, an employee had been unfairly discharged or suspended from employment for union-related activity. Under Bill 79 the Board also acquired the authority to impose broader remedies: namely automatically certifying a union as a bargaining agent (S. 141(5)(c)(i)). Undue employer interference, Young commented,

> may very well preclude a fair expression of opinion ever being obtained from those employees. The threat has been there, and it's too late after the fact to try to tap them on the wrist and say, that shouldn't happen, without having effect. So if there's clear proof of that situation, the board may be able to order that the trade union be certified in respect of that

> bargaining unit, without a vote (Young quoted in *AH*, 1980: 1517).

Just as the Board could automatically certify a union where there was evidence of undue employer influence, it was also free to refuse to issue a certificate where, as Young explains, the union had used "tactics somewhat stronger than the persuasion we would think fair" (*AH*, 1980: 1517). Though Young's statements conceded that a worker's decision about union representation could be unduly influenced, he did not assume that the threat resided only with employers. Instead the new provision reflected the view that employers and unions were alike in that they shared the ability to coerce employees.

Several years later, in 1983, the government introduced legislation that appeared to be at cross-purposes with attempts to protect employees from coercion. Bill 110[45] expressly granted employers the ability to communicate directly to his/her workforce. Section 143.1 read:

> (1) An employer has *the right to communicate* to an employee a statement of fact or opinion reasonably held with respect to the employer's business.
> (2) In the exercise of this right under subsection (1) an employer shall not use coercion or intimidation.

The second statement had been added following complaints from New Democrats that the employer's right to communicate appeared to be free of any constraints (*AH*, November 29, 1983: 1901). New Democrats charged that the second sub-clause (S. 143.1(2)) was too vague and weak, and that it needed to be much more explicit in its prohibitions if it was to provide employees with adequate protections from employer influence. Young however, contended that the addition of subsection 2 allowed the employer "ample opportunity" to make known his/her views while at the same time affording employees protection from coercion (*AH*, November 29, 1983: 1901). The debate clearly involved quite different assumptions about rights and employer power. For New Democrats there seemed little doubt that employers would use the communication provisions to turn workers against unions and thereby interfere with labour's right to organize. For the government such communication was a legitimate right. The Minister maintained that an employer ought to be able to communicate "freely" with employees just as he/she ought to be able "to address his corporate business in whatever form he wishes" (*AH*, November 30, 1983: 1934).

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[45] *Labour Relations Amendment Act*, S.A. 1983, c. 82.

4. The Right to Strike

In Canada a union pursuing a collective agreement can refuse to accept the terms that the employer has offered and may call a strike. Labour has viewed its ability to strike as a basic human right and has been wary of legal initiatives that have attempted to restrict such action (e.g. the *IDIA* which suspended strike action during conciliation). The strike is viewed as the cornerstone of collective bargaining, and as a critical source of leverage in contract negotiations. Some also see the strike as having a broader political dimension. Panitch and Swartz (1993) define the right to strike as:

> the right of workers to engage in collective work stoppages without interference, intimidation or repression by the state or capital. This right makes "freedom of association" an effective means for workers to exercise collective power, whether as a form of pressure to achieve union recognition and to win specific demands from employers, or as a form of political mobilization and protest (p. 248).

The conditions under which workers may take legal strike action are strictly limited. In the nineteenth century there was no such category as the legal strike. Strikes were a restraint to trade and were illegal. Under the *Industrial Disputes Investigation Act* (IDIA) strike action was considered legal where the parties (i.e. those in specified industries) had first participated in mandatory government conciliation. With the adoption of *Wagner*-style legislation in the post-WWII years, unions could no longer strike over the issue of recognition as such disputes were to be administered by an agency of the government. Unlike the *Wagner Act*, Canadian laws restricted strike action in other ways. Workers were prohibited from withdrawing their labour in disputes arising from the interpretation of collective agreements what are known as "rights" disputes. Strike action was considered legal when the matter in dispute pertained to the terms that were to be included in a first or new collective agreement (i.e., interest disputes), and then only after prescribed third party efforts (e.g., conciliation) had failed to produce a settlement. Strikes under any other conditions were deemed to be in violation of the law. In recent decades Canadian jurisdictions have used the law to suspend legal strikes and to then treat them as illegal (see Panitch, 1993: 215-221). Governments have contested labour's claim of a right to strike, and have instead characterized strikes as activities that must be weighed in relation to other considerations such as the maintenance of social order and the protection of third parties.

a. The Right to Strike in Alberta

Alberta's strike regulations have been somewhat more onerous for labour than those in other Canadian jurisdictions. Alberta requires the Alberta Labour Relations Board to supervise a strike vote before a strike receives the sanction of law. Alberta law also affords the government considerable latitude in declaring legal strikes illegal. In 1960 legislation was enacted that enabled the government to declare strikes in utility and hospital services illegal when they were thought to threaten public safety. Though this power had never been used in the 1960s, in 1970 the provision was extended to disputes[46] in other sectors and industries. Alberta and British Columbia were the only two provinces that vested the government with such powers.

More permanent restrictions were imposed on labour's right to strike in 1983 with the enactment of Bill 44: the *Labour Statutes Amendment Act*. The *Act* withdrew the right to strike from all employees in Alberta hospitals and auxiliary hospitals.[47] The nurses' union, the United Nurses' of Alberta (UNA), interpreted the provisions of Bill 44 as a form of retribution for taking strike action in 1977, 1980 and again in 1982. In 1982 the government had responded by enacting the *Health Services Continuation Act* which declared the Alberta nurses' strike illegal and ordered 6,000 nurses back-to-work. In 1983 Bill 44 was purportedly introduced as a more permanent restriction on the nurses' ability to strike (Panitch and Swartz, 1993)

Much of the debate on Bill 44 drew on competing conceptions of the strike. In his case against the Bill, Grant Notley (ND) explained that labour's ability to strike was the cornerstone of collective bargaining. Without an "or else" (i.e., a strike), he claimed, collective bargaining would be significantly undermined. Notley insisted that the ability to strike was labour's right and that Albertans would attempt to exercise this right in spite of the law. The result, he insisted, would be unnecessary confrontations (Notley in *AH*, 183: 1202). The government constructed a different account in which the strike was not a right but an activity that could be granted and withdrawn by statute. The freedom of association and the freedom of speech, Labour Minister, Les Young contended, were fundamental principles that were judged to be of a much higher order than the ability to strike (Young in *AH*, May 27, 1983: 1198). The work stoppage was not a right but "an auxiliary capacity of a lower order to collective bargaining" (*AH*, May 27, 1983). To support his case Young noted that nowhere in Canada was the ability to strike an "absolute, unfettered" principle. Without limits on the strike there would be anarchy. Bill 44 was thus portrayed as a means to avoid confrontation not, as Notley had argued, a way to ferment it[48]. The government, thus, presented Bill 44 as compatible with and not at variance to the public interest and consistent with the ideals and principles of a democratic society.

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[46]. This legislation was used to end five strikes in the 1970s and two in the 1980s (Panitch and Swartz, 1993: 221).

[47]. The Act also imposed substantial financial penalties for unions and their members who defied the strike-ban.

b. The Right to Strike in the Public Sector

Alberta has also restricted, some have said "bypassed", the extension of collective bargaining rights to workers employed in the public sector (Panitch and Swartz, 1993). In 1967 the Federal government enacted the *Public Service Staff Relations Act*[49] (PSSRA) which conferred collective bargaining rights on government employees. In the years that followed most provincial jurisdictions followed suit. While a number of provinces enacted collective bargaining legislation which also granted workers the ability to strike, Alberta was among those that did not. The rights extended to the Alberta Civil Service Association[50] (CSA) in 1968 were relatively limited. Not only was strike action prohibited, but the government retained the authority to delimit those matters that were negotiable and to act as final arbiter where matters remained in dispute. Though the legislation declared that the CSA had the sole right to bargain with the government, its powers vis a vis the government had changed very little (Finkel, 1986). In the 1970s the Alberta Union of Provincial Employees (AUPE), formerly the CSA, began to press the government for the right to strike. In 1977 with the introduction of Bill 41—the *Public Service Employee Relations Act*[51] (*PSERA*), AUPE's demands for full collective bargaining rights were denied.

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[48]. Recognizing that a prohibition on strike action might not always be obeyed, Bill 44 also included a significant punitive measure for those unions that contravened the law. An employer could serve notice of his intention to "suspend the deduction and remittance of union dues...payable to the bargaining agent" (section 117. 94(1)). The employer was free to suspend payment for not more than six months provided that the union did not dispute the action, or, where it had contested the suspension, provided the Board had determined that a strike had indeed occurred. Notley argued that the provision was a threat to union security arrangements, as employers would attempt to suspend the check-off at will. This development he was sure would prompt "implacable opposition from organized labour" (Notley, quoted in *AH*, 1983: 1204).

[49]. Acts governing public sector workers are organized around many of the same concepts which order private sector legislation. The influence of Wagner is evident in their certification procedures and the Labour Relations Boards that administer the legislation. Some jurisdictions require conciliation or mediation before a work stoppage is permitted, reflecting developments indigenous to Canada. Others, however, prohibit strike action, and require compulsory arbitration as a final resolution.

[50]. The CSA was established in the 1940s as a voluntary body representing Alberta public servants. The association was conservative in its outlook and maintained very amicable relations with the provincial government. Finkel notes that such relations were shaped to a considerable extent by the Aberhart government and later Manning's practice of making appointments on partisan grounds. Prior to the 1960s there had been little interest in collective bargaining (Finkel, 1988). The CSA was a conservative

As a means of pressuring the Alberta government to reconsider its position on the strike, organized labour appealed to the International Labour Organization (ILO)—a United Nations body which sets standards for labour and industrial relations—to issue a ruling on whose reading of the restrictions was more valid. Following the enactment of the Alberta *PSERA* the Canadian Labour Congress (CLC) filed a complaint with the ILO contending that the *Act's* provisions were in contravention of ILO convention no. 87 on the freedom of association. In 1980 the ILO Freedom of Association Committee ruled that the restrictions placed on the strike were much too broad and that *PSERA* had failed to comply with the freedom of association convention[52]. Following the enactment of Bill 44 in 1983, the CLC submitted a similar complaint to the ILO.[53] In 1985 the ILO Freedom of Association Committee concluded that the restrictions on hospital workers and public servants had gone "beyond acceptable limits on the right to strike"[54] (quoted in Fudge, 1986: 14). Though Canada was signatory to Convention No. 87, Alberta was not obliged to act on the ILO recommendations.

c. The Right to Strike and the Canadian Charter

Though the ILO decisions had a certain moral and rhetorical value in labour's case for the right to strike, they did not prompt the Alberta

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organization and relations between its leadership and the Social Credit had remained largely amicable. In 1968 the Social Credit government enacted legislation[50] under which the CSA would, where a majority of the employees were CSA members, acquire the exclusive right to bargain with the government. .

[51]. S.A.. 1977, c. 40.

[52]. The ILO Committee recommended that the Alberta government reconsider its position on the strike: restricting the prohibition to those workers whose tasks were truly of an essential nature (Canadian Labour, June 1983: 4).

[53]. The ILO criticized two other Canadian governments as well as Alberta: Ontario and Newfoundland. See Fudge (1986) for an overview of these cases. For more details on complaints of violations of ILO standards in Canada generally see Zeytinoglu (1987).

[54]. As set out in article 3 of the Convention no. 87.

government to revise its legislation. The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 provided labour with another, more potent means to substantiate its claim to the right to bargain collectively and to strike. The *Charter* extended to Canadians certain fundamental protections and gave the Canadian judiciary powers to strike down legislation, at both the federal and provincial levels, when it was judged to infringe upon such protections. Labour claimed that its right to bargain collectively and to strike were both protected by s. 2 (d) of the *Charter* which guaranteed the freedom of association. Labour claimed that government legislation which restricted collective bargaining and strike action was unconstitutional. In 1987, however, the Supreme Court, in a series of decisions known as the 'labour trilogy', ruled that bargaining and strike action were not protected activities (see Carter and McIntosh, 1992 for more details). The most substantial of the cases pertained to the constitutionality of restrictions imposed by Alberta labour law: the *Reference re Public Service Employee Relations Act (Alta.), Labour Relations Act (Alta.), & Police Officers Collective Bargaining Act (Alta.) (1987)*. In a majority decision, Justice Le Dain wrote:

> The rights for which constitutional protection is sought—the modern rights to bargain collectively and to strike, involving correlative duties or obligations resting on an employer—are not fundamental rights or freedoms. They are the creation of legislation, involving a balance of competing interests in a field which has been recognized by the courts as requiring special expertise (cited in Panitch, 1993: 60).

In justifying its decision, the Court, like the Alberta government in earlier debates on Bill 44, had relegated collective rights to a secondary status: as creations of the Legislature. The decisions represented a significant blow to labour.

5. Management Rights

Employers today do not enjoy the same degree of discretion and rights to set terms and conditions of employment and in managing workers as they did a century ago. Management rights are limited by labour relations legislation. The federal government's adoption of the principles contained in the *Wagner Act* imposed quite significant restrictions on an employers ability to act unilaterally. Where there was majority support for unionisation, employers were compelled to recognize the union as the workers' representative. Employers were then obliged to enter good faith negotiations with union officials—or potentially face charges of an unfair labour practices. Employers retained the freedom to contract. Some jurisdictions have taken some steps to restrict this freedom by prescribing a number of terms and conditions that must be included in a collective agreement (e.g., the compulsory dues check-off). Such initiatives have the effect of reducing somewhat the scope of bargainable issues (Arthurs *et al.*, 1981). Employers are also subject to the provisions of a web of other legislation, including: minimum standards codes; health and safety regulations; employment/pay equity statutes; and so forth.

Along with the range of statutes governing the various dimensions of the employment relation, employer actions are constrained by the terms and conditions that they negotiate with trade unions (Wellington, 1968). Matters that are not addressed in the collective agreement, however, are deemed to fall under management's unilateral control. In other words management claims sole control over all matters that are not specifically addressed in the collective agreement. Often collective agreements contain "residual rights" clauses that make this explicit (see Craig, 1990 for details). The idea that management can claim such "residual rights" has been challenged by labour. Some see this as the remaining vestiges of earlier conception of labour relations in which the employee and the state had very little say in the employment relation. The legitimacy of management prerogative has been challenged by trade unionists who claim that ownership/management does not confer any right to act unilaterally on issues that affect workers. Instead employees should be granted the ability to participate in decisions in areas, such as investment policy, that are considered management's preserve (Craig, 1990)

6. Summary

In this section I have examined how the idea of rights for labour emerged and how these have gradually affected management's rights, two matters that shape understandings of labour law during the Alberta review initiative. Early Canadian legislation was not developed to guarantee labour's rights. Instead the idea that the law should protect workers' rights was imported to Canada from the United States in the 1930s and 1940s. A key assumption of the American *Wagner Act* was that labour was disadvantaged in the employment relationship, and therefore required certain protections if its rights were to be enforced. When the principles of the *Wagner Act* were first adopted in Canada there was no sense that there was a need to redress an equality in bargaining power and so the two parties were treated as equals. Later innovations in Canadian labour law, such as first contract arbitration, have reflected the view that labour and employers are not equals and that the former requires additional protections to be able to exercise its rights. An awareness of these two approaches to achieving legislative balance is useful, because they are played out again during the Alberta labour review. I also consider how understandings of the right to strike have changed over time and how in Alberta strike action has been limited and subject to more regulations.

E. Narratives on the Economy

1. Linking Labour Law and the Economy

Conceptions of the economy have played an important role in the development of Canadian labour law and, as I will show in subsequent chapters, played a significant role in shaping understandings of labour law during the 1986 Alberta review. In the nineteenth century the notion of the *laissez faire* economy that was imported to North America from Great Britain, was used to oppose unionisation and collective action by workers. Worker collectivities were thought to distort and interfere with what were construed as the natural workings of the economy. Work terms imposed by workers' combinations were thought to have deleterious economic consequences. The prevailing view was that the terms and conditions of employment were best left to the machinations of "the market".

American labour legislation drafted in the 1930s was written with the specific economic goal of lifting the US economy out of the Great Depression. The legislation was based on different assumptions about the employment relationship and the operation of the economy. Individual employees were believed to lack bargaining power vis a vis employers, a condition which was purported to have depressed wages. The promotion of unionisation and collective bargaining was presented as the means of mitigating the deflationary pressures[55]. In promoting these policy goals the Wagner act had rejected "the critical normative premise of classical economics...[that] the labor market[was] assumed to operate in a manner that protected the interests of all parties" (Kochan, 1989: 23). Wagner attempted to protect the rights of workers by creating a balance between the parties.

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[55]. The statement of policy contained in section 1 of the *Wagner Act* maintained that U.S. employers' refusal to recognize unions had created an "inequality of bargaining power" which: burdens and affects the flow of commerce, and tends to aggravate recurrent business depression, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries (s. 1).

In the 1970s and early 1980s Canadian labour relations policy was revised with a different economic problem in mind: spiraling inflation. In 1975 the federal government responded with a three year Anti-Inflation Program (AIP) that called for private sector wage and price controls.[56] Later, in 1982, the federal government provided for statutory public sector wage controls, limiting increases to six per cent in 1982-83 and five per cent in the following year. Terms contained in existing collective agreements were also extended through the duration of the controls, effectively prohibiting collective bargaining. Many provincial jurisdictions followed the federal government's (1982) lead, instituting "six and five" wage restraint programs of their own. Alberta was one of four provinces that did not.

2. Narratives on labour law and the Economy in Alberta

a. Bill 44

Though Alberta had opted not to enact statutory wage controls, the government expressed concern about the need to exercise "restraint and fiscal responsibility" (Szwender (PC) *AH*, 1983: 1208).[57] Traces of this concern are evident in Bill 44—the *Labour Statutes Amendment Act*[58]—in 1983. Included in Bill 44 was a new Division entitled "Compulsory Arbitration." This outlined dispute resolution procedures that would apply to those workers—such as public servants and hospital workers—who were prohibited from taking industrial action. The Bill stated that where the affected parties had reached impasse and following unsuccessful efforts to mediate a settlement, the Minister of Labour was free to establish a three-person arbitration board. The board was charged with inquiring into the dispute, taking steps to effect an agreement and, then if such efforts failed, deciding outstanding issues in the dispute. In considering its award the Board was required to consider wages and benefits in the private and public sectors of the economy and in union and nonunion employment, as well as "any fiscal policies that may be declared from time to time in writing by the Provincial Treasurer" (s. 117.8 (a) (iii)).

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[56]. The controls proved very unpopular and prompted a wave of protest. The Canadian Labour Congress (CLC) called for a national strike on October 14, 1976—a "Day of Protest"— to mark the end of the first year of the controls. Almost 50, 000 Albertans participated in the illegal walkout (Caragata, 1979: 145).

[57]. In the early 1980s demand for Alberta oil and gas fell and Alberta's burgeoning economy slipped into recession. Provincial unemployment rates jumped precipitously: from just under 4% in 1981 to double digit rates of 11.2% by 1984 (Alberta Labour, 1987a: 3). Economic decline had important implications for the Alberta government's finances. The drop in demand for oil and gas meant lower oil royalties, and reductions in the provincial tax base. Government programs and bureaucracy had expanded significantly during the boom years but in the context of declining public revenues the government began to talk of the need for fiscal restraint .

[58]. S.A. 1983, c. 34. Bill 44 amended the *Labour Relations Act* and the *Public Service Employee Relations Act*, the *Liquor Control Act and the Firefighters and Police Labour Relations Act.*

Debate on Bill 44's compulsory arbitration provisions brought economic concerns into sharp relief. The government maintained that it was obligated to draft legislation that responded to economic change. Labour Minister, Les Young commented:

> The whole subject of labour law is very complex. It's a subject which is dynamic, in that it is ever evolving. It is very important because it deals with the manner in which we organize in our society to respond to the perceptions and expectations that people have for the division of income flow which is available to us. If our labour laws do not meet the demands and challenges of a changing workplace and a changing society, then of course they become irrelevant *and do not reflect economic reality. It is our challenge to see that they do* (Young in *AH*, 1983: 1197: emphasis added).

Bill 44's guidelines for arbitrators were presented as a suitable response to the new fiscal reality and as a way to ensure that wages and benefits were "fair and reasonable" to all parties concerned, including the public. A primary concern was eliminating disparities in wage increases between the public and private sectors. Forcing arbitrators to consider wages in the public sector was presented as a reasonable means of avoiding what were seen as overly generous settlements in the public sector.[59] Such increases, the government argued, were excessive especially since many workers in the private sector were being asked to forego wage increases or even to accept rollbacks. The 1981-82 recession had seen the advent of the practice now known as "concession bargaining" (Craig, 1990: 24).

In its defense of the arbitration procedures, members of the government appealed to the idea of the market. Public sector workers were able to command premium wages, the government argued, because they were insulated from the economic forces that shaped wages and benefits in private-sector employment. Labour Minister, Les Young made the case thus:

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[59] Public service employees were awarded wage increases of 11 per cent for 1982 and 8 per cent for the following year and in 1982 arbitration of wage matters gave hospital nurses increase in excess of 20 per cent (Canadian Labour, 1983: 4). Arbitration also resulted in 40 per cent wage increase over two years for firefighters and a 32 percent increase (again over a two-year period) for Edmonton bus drivers (Livingstone, 1984: 21).

> In private-sector collective bargaining, both parties must recognize that the deal upon which they agree must be balanced enough to allow the employer to compete. If the employer can't compete with his competitors, he sells no product, his operation loses, and so does the employment opportunity for the employees. There's a basic, fundamental bottom line...that is the reality of the private sector.
>
> There is no such reality in the public sector, and that's what we must address. The reality in the public sector, the bottom line, is the next election (*AH*, May 27, 1983: 1200).

Reference to government fiscal policy by public sector arbitrators was heralded as the public sector's answer to the "bottom line". It was a mechanism that was expected to yield more "realistic" private sector wage demands (*AH*, 1983: 1200, 1209).

New Democrats did not accept the government's arguments for the proposed arbitration provisions. Grant Notley insisted that the government had misread the significance of the private-public wage differences. The real problem, he insisted, was one of timing since the awards under scrutiny "were for periods when we had a very different economic outlook" (*AH*, 1983: 1202). Notley claimed that the awards to which the government was reacting had been made according to "common sense guidelines" and that the real reason for the arbitration provisions was simply that the government did not like the awards. Viewed in this context, Notley argued, the changes proposed in Bill 44 constituted a "massive overreaction" and were an unfair indictment of the existing collective bargaining system. By requiring arbitrators to consider government fiscal policy before issuing its awards Bill 44 was expected to preclude impartiality in the arbitration process.

The government and the Opposition reached two very different conclusions about Bill 44. The government presented the compulsory arbitration provisions as an alternative to wage rollbacks and "six and five"-type wage control measures instituted across Canada. The proposed arbitration provisions were preferable because they fostered what the government described as "fiscal leadership" and "responsibility" while ensuring that collective bargaining remained fair and equitable to all affected parties. This was disputed by the Opposition, members of which saw the arbitration board as "a mere instrument" that would be used "to impose a system of informal wage restraint" (*AH*, 1983: 1268). In other words, though Bill 44 was not a statutory wage control program in name, it was in its effect.

b. Economic Recession and Bill 110

The economy was also a salient theme in political debate on Bill 110—the *Labour Relations Amendment Act*[60]—which was directed primarily at labour-management relations in the construction sector.[61] In Alberta, the fortunes of the construction industry were tied closely to the developments in the resource sector, especially oil and gas. In the 1970s and the very early 1980s activity in the Alberta construction industry reflected the strength of the wider provincial economy, a vibrancy that was sustained by rising oil prices. While all segments of the construction industry experienced heightened demand, activity surged (after 1975) in the industrial sector with the construction of energy-related "mega-projects" (Alsands and Cold Lake). Such undertakings became a driving force in the provincial economy. During the 1981-82 recession soaring interest rates and declining energy prices brought two Alberta mega-projects to a halt, the effects of which rippled throughout the rest of the provincial economy. The value of new construction dropped substantially: in 1981 new construction was valued at $13 billion, but by 1984 this figure had tumbled to $8.2 billion (Rose, 1992: 191). The downturn was also reflected in high unemployment figures: construction industry rates rose from 5.1 per cent in 1981 to 29.9 per cent in 1983 (Fisher and Kushner 1986: 784, Table 3) and some local unions reported unemployment rates as high as 50 per cent (Ibid, 1986: 778). This decline had far reaching consequences, which extended to collective bargaining outcomes and construction labour relations generally.

As the recession reduced the availability of new construction projects, competition between contractors intensified. One effect of the slowdown was that unionized construction firms were placed in direct competition with firms operating on a non-union basis. Prior to 1982 the use of union labour in non-residential construction was the norm rather than the exception. In 1980 some 80 per cent of economic activity in industrial and commercial construction was completed by unionized labour (Rose, 1992: 192). Most non-union outfits operated in the housing sector, and were much smaller than their industrial counterparts. During the boom non-union contractors had been forced to match union rates in order to attract workers. When the economy faltered and labour supply became more plentiful relative to demand, non-union firms began to cutback wages. This meant non-union firms could obtain competitive advantage in the tendering process over union firms that were bound by collective agreements.[62] As a result non-union firms began to move beyond their traditional market of residential construction into industrial projects.

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[60] S.A.. 1988, ch. 82. This statute was repealed in 1984.

[61] Alberta, like other Canadian jurisdictions, has made special provisions for this industry in recognition of the "unique employer-employee relationship" (Woods, 1973: 249). Relations between contractors and construction employees are non-continuous: when a contract is completed demand for employees often ends, and the employment relationship is severed. This instability makes for what Woods (1973) has termed the "disappearing bargaining unit". As a result union certificates have been issued to building trades unions in a specific geographic area, and bargaining, at least from the union's side, has occurred on this basis.

Unionized contractors responded by streamlining their operations —laying off staff, cutting management pay and, where such measures failed, filing for bankruptcy (Fisher and Kushner, 1986). Contractors also pressed trade unions to renegotiate the terms of the 1982 collective agreements, although concessions were rare. As a measure to avoid unemployment, many workers from the unionized sector took non-union jobs. The greater availability of skilled labour in the non-union sector only further undermined the competitive position of the unionized sector.

Unionized firms were legally bound by collective agreements that had been negotiated in 1982 while the economy was still buoyant. Firms were under pressure to complete projects on time or face penalties or financing difficulties, constraints which undermined their bargaining position vis a vis labour. During the 1970s and early 1980s compensation rates had risen substantially (see Fisher & Kushner, 1986: 781) and in 1982, before the effects of recession were felt, hourly wage rates among 17 trade groups rose more than 25 per cent, with increases ranging from $4.16 to $5.10 (*Alberta Report*, May 21, 1984: 16). In an attempt to pay market rates rather than union rates some unionized contractors began to engage in "double-breasting": setting up open shop subsidiaries to compete with non-union firms.[63] Section 133 of the *Labour Relations Act*, however, imposed legal restrictions on an employer's ability to "spin-off" non-union companies.[64] Unionized contractors saw their competitive position tied to section 133, prompting a campaign for its repeal. It is this context that the LRA came to be viewed as problematic and in need of revision.

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[62]. George Durocher, President of the Alberta Construction Labour Relations Association (ACLRA) which represented approximately 400 unionized construction firms, reported that because of lower wages and benefits non-union companies were able to make bids that were between 16 and 20 per cent lower than those made by their unionized counterparts (*Alberta Report*, December 5, 1983: 6).

[63]. During the debates on Bill 110, Young notes that contractors and trade unions alike had estimated the number of spin-offs to be several hundred in the previous year (*AH*, November 30, 1983: 1934)

[64]. Section 133 stated that: On the application of a trade union or on its own motion, when, in the opinion of the board, associated or related activities or businesses, undertakings or other activities are carried on under common control or direction by or through more than one corporation, partnership, person or

The Alberta government introduced Bill 110 on November 18, 1983. The legislation did not remove section 133[65] of the *LRA* which authorized the ALRB to impose successor rights where a company had spun off non-union entities. The measures were amended so that where a unionized parent company had spun-off a non-union subsidiary, the workers in the spin-off would not be automatically issued a union certificate nor would the collective agreement apply. Bill 110 proposed that in the construction sector the Board would be prohibited from issuing a union certificate "unless a majority of...employees...vote in favour of the trade union as their bargaining agent" (s. 133(2)). If a construction outfit could prove to the Board's satisfaction that a spin-off had "not been created for the purpose of avoiding a certificate of collective agreement" the Board was not obligated to issue a certificate or declare that the collective agreement was still applicable[66].

Though the Minister maintained that the "basic problem" was economic and had "nothing whatever to do with legislation", the government had nonetheless proposed a legal solution (*AH*, 1983: 1905). As with Bill 44 the Labour Minister appealed for support of Bill 110 on economic grounds. Young maintained that collective agreements negotiated in 1982 did not "reflect the market" in which non-union firms were able to pay workers less. Bill 110 was presented as a way of facilitating "adjustment" in the industry and eliminating an unacceptable disparity between wages and working conditions in the union and non-union sectors which threatened to force union contractors out of business. Young maintained that the existing legislation was balanced in labour's favour. Contractors had complained to him about their employees' ability to "escape the collective agreement", by locating work in the non-union sector, while employers remained bound by the agreement's terms and conditions (*AH*, 1983: 1934). Bill 110 was presented as a measure to

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association of persons, the Board *may* declare the corporations, partnerships, persons or associations of persons to be one employer for the purposes of this Act (emphasis added).

[65]. Section 133 authorized the ALRB to declare that spin-off companies would be treated as one employer, which meant that if the initial bargaining unit was certified, the certificate would remain effective, as would the terms of any collective agreement that had been negotiated.

[66]. This provision was time-limited, however. After December 31st, 1984 employers would no longer be obliged to demonstrate that circumvention of a collective agreement was not their intent. Having the onus of proof fall to the employer, Young argued, would help stem spin-offs since unions had had difficulties "piercing the corporate veil" (*Alberta Hansard*, 1983: 1901). Notley responded that this was not a compromise to the trades: in practice the onus would still fall to unions (i.e., to provide evidence that employers' claims of good faith were at variance with their intent), and that this was not an easy task (i.e., proving intent). Notley cited the difficulties associated with proving intent and predicted that "open season" on the construction trades was imminent.

restore fairness by enabling "union contractors, where they have spun off, to be judged by their employees as to whether [they] wish to have a continuing union relationship" (*AH*, 1983: 1904).

The New Democrats acknowledged that Alberta's economy was in trouble, but its Members insisted that Bill 110 did not constitute an appropriate solution to the union construction sector's troubles. Notley suggested that the Bill 110 was indicative of the government's market driven approach to labour policy. It was inappropriate, he argued, for the government to be tailoring Alberta labour laws to the market.

> The minister talked about the economic climate and the changes. Very simply...now we are facing a recession—obviously we all have to agree with the Minister's comments there. But the only analysis that I can come to is that it seems that we had better labour legislation when we needed the tradesmen. At the time we needed the tradesmen, we had the Syncrudes and all the other major projects...It seems to me...that we are saying that the rights of trade unions are negotiable. When we need them, we will give them good legislation, or at least better...Now, when the legislation comes, when times are tough, we will niggle away at them to do what we can for the big six, to make them competitive. Surely...that's not the proper way to look at labor relations (Notley in *AH*, 1983: 1906).

Martin argued that government intervention was not required since the best way to restore parity between the two sectors was through collective agreements, a process that "always reflects the economy of the time" (Martin in *AH*, November 29, 1983: 1912). The Bill was instead portrayed as a "regressive" and "anti-labour" initiative that was designed to "decimate" the construction unions.[67]

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[67] Bill 110 was due to take effect upon proclamation. On January 31, 1984, however, the government announced that it would not proclaim the legislation in 1984, a decision that has been linked to Alberta labour's lobbying efforts (Fisher & Kushner, 1986; Canadian Labour, February, 1984: 4). Later in the year the *Act* was repealed.

3. Economic Narratives in the 1980s and Beyond

a. Competitiveness and the Nature of Union-Management Relations

Throughout the 1980s there had been growing concern about the ability of Canadian business to compete with foreign companies in what was seen as an increasingly competitive and global economy. For some, increased competitiveness also triggered questions about the utility of Canada's existing system of industrial relations. Writing in connection with the *Royal Commission on the Economic Union and Development Prospects for Canada*, Riddell (1986: 6) wrote that "the current economic situation" had "placed issues relating to labour-management co-operation at the top of the agenda". Viewed as excessively adversarial and legalistic, it was urged that the Canadian *Wagner*-based framework be replaced by a more co-operative and consultative system. Typically the experiences of Germany and Japan, where more consensual and less juridified industrial systems had developed, were held up as models which Canadian jurisdictions should treat try to emulate. There was an interest in German statutory works councils and in Japanese employee participation programs (Adams, 1986).

In recent times the policy direction in which Canada should move in order to achieve more co-operative labour relations has been the subject of debate. Proposals for change were far-ranging: from change at the margins to a more radical transformation (Drache and Glasbeek, 1992). Recently Adams (1993) has argued that tinkering with the existing framework is inadequate because it is incapable of yielding the desired levels of co-operation. Wagner-style policies, he argues, provide a regulatory environment that is inhospitable to innovations in labor relations practices. A number of mechanisms designed to promote co-operation—such as grievance mediation, preventative mediation and joint labour-management committees—have been instituted in Canadian jurisdictions (Riddell, 1986; Adams, 1986; Ontario Ministry of Labour, 1986). Japanese management practices have also developed in Canada under the rubric of Quality of Work Life (QWL) and "team production".

b. Competing Narratives on Free Trade

Canadian opponents of bilateral free trade between Canada and the United States also made links between economic change and labour law. A key assumption made in such accounts was that a free trade arrangement would unleash competitive forces that would compromise the Canadian government's ability to pursue and support independent policies and programs. Opponents predicted that employers in Canada would see Canadian employment and labour policies, which were seen to provide workers a greater level of protection, as a competitive liability and would pressure Canadian government's to bring their policies into line with those in the United States.

> The free trade agreement...makes no mention of Canadian labour laws. Nevertheless, Canada's labour and employment legislation—superior to most American labour laws—will face intense downward pressure from the new economic order spawned by free trade.
>
> The threat comes from the new competitive forces that Canadian business will face in the enlarged North American marketplace. Location decisions for investing in new plants and offices, or simply maintaining existing ones, depend in part upon a wide range of labour cost factors. Given the increasing mobility of capital, factors like minimum wage levels, levels of unionization, unemployment rates, and unobstructive labour laws are becoming critical components of corporate investment policy (Lynk, 1988:).

In short, free trade with the United States meant a loss of sovereignty and policy harmonisation with the United States. Proponents of free trade, such as the Alberta government, challenged this view. In a pro-free trade document entitled *Beyond Alberta's Borders*, published shortly before the 1986 strike at Gainers, the Alberta government chided free trade skeptics for their lack of "confidence and pride in their own Canadian identity" (Alberta, 1986: 9).

4. Summary

In this section I have outlined how understandings of the economy have influenced the development of labour law in Canada and Alberta. Accounts of rising inflation and its effects were used across Canada to rationalize wage restraint legislation in the 1970s and early 1980s. In Alberta concerns about inflation were manifest in specific provisions in Bill 44, which amended the *Labour Relations Act* in 1983. I also examined how narrative accounts of developments in Alberta's construction industry prompted the Tories to introduce legislation that would allow employers to spin-off non-union firms. I also considered how concerns about growing competitiveness from abroad have prompted a rethinking of the *Wagner*-based system of labour relations and how labour law has been drawn into narratives on free trade. Narratives on the economy, such as accounts of competitiveness and free trade, were important features of debate during the Alberta review initiative

In this chapter I have outlined how narratives on the legitimacy of unions and collective bargaining, the role of government, rights, and links between the economy and labour law have developed. In the following chapters my aim is to explore how these narrative themes play out in the problematization of the *Labour Relations Act* in 1986 and during the two year-long review initiative that followed.

IV. Narratives on the Gainers Dispute and the Problematization of the Alberta *Labour Relations Act* (*LRA*) in 1986

A. Introduction

In this chapter my aim is to understand how the Alberta *LRA* came to be viewed as problematic in 1986. I show how labour law became entangled in debate on labour relations developments in the summer of 1986. Specifically, I consider how problems in the *LRA* were identified in narratives on a bitter and violent labour dispute that occurred at the Edmonton Gainers meat packing plant. I show how the narrative themes that I identified in the previous chapter fed into narratives on Gainers. I also show how a struggle to impose meaning on events at Gainers also precipitated a debate over the "real" meaning of the *LRA*. In the first section of this chapter I provide some background information on the meat packing industry. I then provide details on critical events leading up to the 1986 and the events of the strike. In the final sections of the chapter I show how the meaning of the strike was constructed in narratives and the way that the *LRA* was drawn into the struggle to define Gainers.

B. Background to the 1986 Labour Dispute at Gainers

1. Industrial Relations in the Alberta Meat packing Industry

In order to understand the significance of Gainers I will begin by providing background details on the meat packing sector. The meat packing industry has played an important role in the Alberta and Canadian economies. In 1981 meat packing employed some 5,500 Alberta workers, making it the province's largest industrial employer and the ninth largest in Canada (Noel and Gardner, 1990: 35). The industry fared well in the period of stable expansion following WWII. Packinghouse workers were unionized, and enjoyed the benefits associated with core labour market employment: reduced job competition, high wages and benefits (Novek, 1989). Beginning in the late 1970s, however, the industry's fortunes began to change. Slowed population growth, decline in real wages and changes in consumer tastes, prompted a drop in domestic demand for red meat products. As markets shrank, competition in the industry intensified. Employers responded by closing old plants and opening new specialized operations in rural areas where wage rates were typically lower. (Novek, 1989). Low capital costs associated with specialized production also encouraged firms to set up business in the industry which in turn created additional competitive pressures for "full-line" producers. Such developments have led to a much less concentrated and more regionalized meat packing industry (Novek, 1989). The Canadian meat packing industry was also affected by developments in the United States where firms had responded to the 1981 recession by aggressively pursuing a program of rationalization that looked for cost-savings on the labour-side of production (Noel and Gardner, 1990). This involved both production speed-ups and wage rollbacks. Claiming that developments in the United States threatened their competitive position, Canadian firms also began to issue demands for wage concessions. Wage rates in the Untied States were purportedly five to six dollars an hour less than hourly rates in Canada (Robertson, 1984: 21).

2. Concession Bargaining and the Demise of National Bargaining

Demands for greater wage flexibility had significant ramifications for the structure of labour relations in the Canadian meat packing industry. A system of "pattern bargaining" had been in place since 1946 when the United Packinghouse Workers of America (UPWA) called a national strike and won standardized employment terms with Swifts, Canada Packers and Burns. The United Food and Commercial Workers (UFCW)—the successor to the UPWA—would select one firm, usually Canada Packers, as a "strike target" and the resulting contract would serve as a "master agreement". The terms of the master agreement were voluntarily then accepted by most national and regional employers without resort to industrial action. This course of events made for uniform wages and working conditions across the country and saw that no firm was able to obtain a competitive wage advantage over the others (Forrest, 1989). Pattern bargaining remained in effect in the 1982 negotiations. The UFCW was able to secure agreements with Canada Packers, Gainers, Intercontinental Packers and Burns Meats that provided for 12 and 11 percent wage increases in the first and second year of the contract respectively (Noel and Gardner, 1990: 37). The 1984 negotiations, however, marked a turning point in the meat packing industry's union-management relations.

In 1984 Canadian meat packing firms began to demand wage and benefit concessions. Pointing to lower wage rates in the United States, Burns urged its Calgary employees to accept a 40 percent wage cut. It also indicated that it was no longer prepared to negotiate on an industry-wide basis and that plant by plant negotiations were needed to reflect plant-specific economics (*Financial Post*, June 23, 1984). The UFCW rejected both demands, and insisted that it was unprepared to stray from the post-war bargaining structure. Burns subsequently filed charges with Labour Boards in Alberta, Manitoba and Ontario of bad faith bargaining, charges that were upheld in each of the three jurisdictions (see Forrest, 1989). These rulings signaled that although bargaining for a national agreement had been a long-held practice, compliance was strictly voluntary and could not be imposed on employers.

In June, 1984 workers voted to strike at Burns' Calgary, Lethbridge, Winnipeg and Kitchener locations. One week into the Calgary dispute, Burns permanently closed the plant[1] leaving some 600 employees without jobs (*Financial Post*, June 23, 1984). Rejecting demands for wage concessions of 40 percent, 83 workers at Lakeside Packers Inc, a small, independent operation located in Brooks, Alberta went on strike on June 1 (*Alberta Report*, June 16, 1986: 18). Lakeside maintained its operations through the nation-wide strike by hiring replacement workers at wages ranging from $3:00 to $3:80 below the national union rate (Forrest, 1989; Noel & Gardner, 1990). Maintaining operations with a replacement workforce proved very beneficial to Lakeside. Capitalizing on the strike-induced shortage of processed meat products, Lakeside increased its production substantially and by year's end found itself Canada's fifth largest meat packer (Noel & Gardner, 1990: 38).

3. Background on Gainers

Avoiding the established system of national bargaining was also an aim of Gainers, an Alberta-based regional packer. Gainers was owned by Edmonton business tycoon, Peter Pocklington. Pocklington acquired the assets of the Canadian Swifts Company in 1980. The South-side Edmonton Gainers plant was subsequently closed and reopened in Swift's Northeast

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[1] Burns attributed the plant closing to "the unreasonable conduct" of Calgary union workers. The union claimed that Burns had provoked the strike in an effort to avoid payment of severance and vacation pay (Robertson, 1984: 21).

Edmonton packing operation under the Gainers name (see *Alberta Report*, February 24, 1986: 32). Pocklington's business ventures extended beyond meat packing: he had made a fortune[2] in the boom-time real estate market and in car sales, endeavours which later enabled him to purchase the Edmonton Oilers hockey team. In 1983, he also made a foray into the political sphere with an unsuccessful bid for the federal Progressive Conservative party's leadership.

Pocklington's views on labour and trade unions were reminiscent of *laissez faire* understandings of the labour contract in which unions were thought to hamper the operation of the market and the freedom of individuals to enter contracts. In Pocklington's estimation, unions were not legitimate entities. Unions, he believed, acted as a "social monopoly" and interfered with the exercise of individual rights (Nikiforuk, 1987: 36). Viewed as a "self-appointed champion of free enterprise" and individual rights, Pocklington was unsympathetic to labour or its concerns (Noel & Gardner, 1990: 38).

Making Gainers a more efficient, cost-effective operation through strategies patterned after changes in the United States meat packing industry were important objectives for Pocklington during the 1984 contract negotiations. In 1983, Pocklington's recruitment of Leo Bolanes, an American executive to the position of President and CEO of Gainers was viewed as a harbinger of Pocklington's plans for Gainers (Noel & Gardner, 1990). Bolanes was known for his ability to save businesses on the brink of financial collapse. He was also seen by labour as a "union buster". During the 1984 negotiations Gainers called for wage and benefit concessions and proposed an interim agreement, to be effective until the master agreement with Canada Packers was settled. On June 29, Bolanes announced that the union had agreed to accept the company's proposed interim agreement which provided for reduced wages for new employees.[3] The union disputed this claim noting that it had no interest in concession bargaining and that it planned to strike. Bolanes denounced the union for reneging and made it clear that his obligation to his customers meant that he would be forced to replace striking employees (*Alberta Report*, July 16, 1984: 25).

As the Gainers UFCW local was making strike preparations, Gainers ran advertisements in Edmonton, Red Deer and Calgary daily newspapers offering employment for "hardworking, conscientious men and women" with hourly rates beginning at $6.99—the same starting rates proposed by the company in its June 29 offer (*Alberta Report*, July 16, 1984: 25). Owing to restructuring in the local meat packing industry, which had left over 1,000 Alberta workers unemployed, and high unemployment generally, Gainers had a significant pool of labour from which to draw a replacement labour force. Accustomed to better economic times, the union and Gainers' workers were unprepared for the response to the ads—more than a thousand individuals came in search of work[4] (Seymour, 1986: 16). Coincident with this interest in employment at the plant, Gainers fired approximately 450 union employees for refusing to work overtime. In this context the union reconsidered its plans and called off the strike minutes before the strike deadline (*Alberta Report*: July 16, 1984: 25).

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[2] This was not without setbacks. See *Alberta Report* (February 24, 1986 : 32) for a review of Pocklington's successes and failures in business.

[3] Bolanes indicated that the local had agreed to the payment of $6.99 per hour for new employees ($5 below the existing starting rates), a rate that would rise by $1.25 every six months until it was equal to the existing union rates (*Alberta Report*, July 16, 1984: 25).

Negotiations between the parties resumed and culminated in an agreement that closely resembled Gainers June 29 'interim' offer. The contract established a two-tier wage system where starting hourly wage rates were rolled back from $11.99 to $7.00 and all benefits for new employees were eliminated. Concessions were not limited to new employees. Existing workers accepted a wage freeze, and gave up dental and vision care benefits, a statutory holiday and automatic overtime pay for weekend work[5] (Seymour, 1986: 16). The agreement was a bitter disappointment to union officials and union members, but it received both their support: in a vote 454 voted in its favour while 331 voted against (Noel and Gardner, 1990: 39). UFCW national representatives who were negotiating a contract with Canada Packers[6] were also disturbed by the outcome of the settlement. For Gainers the agreement was most auspicious: the company had obtained concessions in a two-year contract and had broken with the industry tradition of national bargaining.

Resentment among employees towards Gainers over the terms of the 1984 settlement lingered (Seymour, 1986). Reflecting on labour relations at Gainers, Dave Werlin, President of the Alberta Federation of Labour (AFL), explained that workers "were very, very hurt and very angry" about the 1984 rollbacks (Johnstone, 1987: 20). The company's actions during the course of the two year agreement did little to assuage Gainers' employees. Though they would be required to work for reduced wages and benefits, employees were also expected to work faster: over the course of the 1984-1986 contract, weekly production jumped from 2.5 million pounds to 7.5 million (Seymour, 1986: 16). This increase, workers charged, had come at a cost of reduced workplace safety (Nikiforuk, 1987: 36). There was also dissatisfaction with the contract's provision for weekend overtime and with Gainers' interpretation of what constituted "reasonable" overtime.

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[4] By 8:00 a.m. on the first day that the ads were run, some 200 people had descended on the plant for employment (*Alberta Report*, July 16, 1984: 25).

[5] Workers were required to work six consecutive days to collect overtime pay.

[6] Canada Packers had insisted on a $3:00 an hour concession on base rates. Following a six week strike, Canada Packers' employees accepted a settlement where only the starting hourly rates would be rolled back $3.00 (Alberta Labour Relations Report, 1986: 3). Noel and Gardner (1990) suggest that the Gainers 1984 agreement made it easier for Canada Packers to obtain such concessions.

Bitterness and resentment over the 1984 contract lingered and spilt over into 1986 contract negotiations. In 1986 the UFCW Gainers local was determined to recoup what it had conceded two years earlier. The union was also looking for the same terms obtained by employees at Canada Packers in the 1986 agreement, which provided for general hourly wage increases of 51 cents and 52 cents in the first and second years of the contract respectively. The union indicated that anything less than parity with Canada Packers was unacceptable. During the 1984 negotiations the union had accepted a wage freeze in exchange for a promise of future pay increases at such time that the company's fortunes improved. For Gainers' management this was not the time and the union's demands for parity were judged to be unreasonable (Nikiforuk, 1987). Pocklington insisted that the union's demands for parity were unacceptable "pre-conditions" to bargaining and that parity with Canada Packers would cost the company an additional seven million dollars. Combined with the additional transportation costs incurred because of the plant's western location[7], increased costs, he insisted, would force Gainers out of business (Selby, 1986; *Globe and Mail*, June 10, A10). Industry wages, insisted Pocklington, were already too high and as a consequence Gainers could not afford the $1.03 wage increases. Instead workers would have to settle for what he termed "market rates" (*EJ*, June 6, 1986: F10).

The UFCW meanwhile interpreted Pocklington's refusal to meet the national agreement as an attempt at concession bargaining, a process in which it refused to participate (*EJ*, May 29, 1986: G10). The union maintained that owing to production speed-ups and the payment of below-average industry wage rates under the 1984 contract, the company's claims that it could not afford parity with Canada Packers were unfounded (Noel & Gardner, 1990; Selby, 1986).[8] The turnaround in the company's financial position was widely acknowledged (see ALRB, 1986). By 1986 Gainers had moved into the American meat packing sector, where it had acquired four plants and had plans to purchase ten more. Gainers had also begun to expand its operations in Western Canada, building a new bacon plant in North Battleford, Saskatchewan (*Albert Report*, June 16, 1986). Later in the dispute the union cited the compensation package offered to strike replacements (consisting of job benefits and an hourly rate of eight dollars, a dollar more than new employees under the 1984-1986 contract) as further evidence of Gainers unwillingness, rather than inability to increase union pay (Seymour, 1986: 16).[9] Both appeared equally resolute in their positions, and a work stoppage seemed imminent.

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[7] The union as well as Gainers' competitors disputed the company's claims, arguing that Gainers competitors were also located in the west (*EJ*, June 7, 1986: B3).

[8] Justice Dubensky also described employee wage concessions as a "major factor in the Company's fortunes being turned around" (Alberta Labour Relations Report, 1986:4).

Gainers anticipated that the union would call a strike, and once again made clear that, in the event of a work stoppage, it was prepared to maintain operations with a replacement workforce (*EJ*, May 15, 1986: B3). In a letter to employees Bolanes warned that:

> I hope you understand that if you vote to strike Wednesday you will be putting your job security on the line...Anyone is mistaken if he thinks we cannot operate this plant with a new work force (*EJ*, May 14, 1986: B4).

As had been the case two years earlier (a day before the union's strike vote) Gainers placed advertisements for replacement labour in local newspapers. The ad noted that a "large Edmonton Manufacturer" was seeking individuals for assembly line jobs and that "in the event of a labour dispute" applicants "may be asked to cross a picket line" (*Edmonton Sun*, May 11, 1986).[10]

In 1986 the union was better prepared for Gainers tactics and determined to win a better settlement. AFL-President Dave Werlin explained that after two years under a concessionary agreement the workers "were ready...this time — they were psychologically ready, they were angry" (Johnstone, 1987: 20). The broader labour movement had also geared up for a strike at the plant. The AFL announced that if a strike was called it would support a nation-wide boycott of Gainers products, and back up Gainers employees both financially and on the picket lines (*EJ*, May 31, 1986: A1). As Peter Boytzun, business agent for the UFCW Gainers local, explained: "Peter Pocklington...wants a fight. We're going to give him a fight. Maybe one he's never seen before" (*EJ*, June 1, 1986: A1).

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[9] The union also noted that Gainers could pay large executive salaries. The union leaked the terms of Company President, Leo Bolanes' contract whose annual salary of 300,000 dollars was also accompanied by additional sums for increasing "the optimum long-term profitability of the company" (*Alberta Report*: June 30, 1986: 21).

[10] The ads, which appeared beginning on May 13, 1986, did not specify the name of the employer, though Gainers management later admitted that they were placed on its behalf.

C. The Strike at Gainers

1. The "Battle" at Gainers

Under the *Labour Relations Act*[11] the UFCW local could only take legal strike action after a board-supervised vote had found majority support for such action, and then after the union had provided Gainers with at least 72 hours notice of the date and time of the strike (S. 90)[12]. Gainers employees overwhelmingly supported strike action—96.3 per cent of the 1017 workers who cast ballots in the May 14 strike vote favoured industrial action — a reflection of employee dissatisfaction with the 1984 contract and its administration (*EJ*, May 15, 1986: B3). The union served notice to Gainers on May 28 of its intention to strike on June 1, 1986 at 12:01 a.m. Gainers responded with a notice to lockout employees at 12:05 a.m. June 1st. In the week prior to the strike deadline the union presented Gainers with its demands for the 1986 contract. The company, however, made no formal offer. On May 31, final attempts at a mediated settlement were without success, and the workers found themselves in a legal strike position. At 12:01 a.m. on June 1 an estimated 300 Gainers gathered at the packing plant to commence picketing (*EJ*, June 1, 1986: A1).[13]

Given Gainers pre-strike initiatives to recruit replacement labour, the UFCW local expected that the company would make a concerted effort to maintain plant operations in the event of a work stoppage. Gainers' first attempt to bus-in replacements came six and a half hours after the midnight strike call. Striking Gainers employees responded by blocking access to the plant. When a bus containing replacement workers made an attempt to break through the picket line and enter the plant, it was forced to a halt by a crowd of pickets. Strikers surrounded the vehicle and began to smash windows with placards, yelling "Scabs". Other pickets made emotional appeals to the passengers. One man walked the length of the bus displaying a wallet-sized picture of his family to the passengers, yelling "See what I'm fighting for - my wife and two kids" (*EJ*, June 2, 1986: A1). Some strikers managed to pry off the bus' windscreen and attempted to pull the driver from his seat. Visibly frightened, the driver backed the bus away from the gate. Replacement workers and later farmers, who had brought hogs for slaughter, were denied access to the plant for the time being (Nikiforuk, 1987: 37).

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[11] R.S.A. 1980, C. L-1.1

[12] In addition to the strike vote the only restriction on strike action was a disputes inquiry board (DIB) appointed prior to the work stoppage. In this case a DIB was not appointed until after the strike had commenced.

[13] Accounts of the very early hours of the dispute suggest that workers were enthusiastic about their cause. They chanted and cheered "Strike, Strike" and "Yankee go home" in reference to Gainers' American President, Leo Bolanes (*EJ*, June 1, 1986: A1).

Gainers indicated that it would seek redress so that replacements and other parties could access the plant. Doug Ford, assistant to Peter Pocklington, commented:

> We fully intend to seek legal injunctions against harassment, physical intimidation of Alberta farmers and individuals entering or leaving our plant...We are videotaping to document harassment and intimidation (*EJ*, June 2, 1986: A1).

Gainers petitioned the court for restrictions on picketing, arguing that the strikers had engaged in a series of illegal activities (*EJ*, June 3: A1). On June 2 Court of Queen's Bench Justice John Agrios, issued an injunction restricting the number of pickets at the plant to 42: six at each of the three entrances, located no closer than ten feet from the gates; and twelve sidewalk pickets on each of the two bordering streets (Seymour, 1986: 16).[14] The order became effective immediately.

Enforcement of the court order, a task for the City of Edmonton police force, led to more picket line confrontations. On the evening of June 2, six men, under police escort, tried to make their way through the demonstrators to post notice of the court injunction. The six men claimed that they were employees of Knight Investigation and had been hired by the law firm representing Gainers (*EJ*, June 3, 1986: A1). The men were met by an angry, surging crowd that eventually forced them to withdraw. Though the injunction was expected to bring peace to the picket lines, in the short term it was expected to heighten the conflict (*EJ*, June 3, 1986: B3). On June 3 almost a thousand pickets congregated outside Gainers in contravention of the court injunction (*Alberta Report*, June 16, 1986: 16). In an effort to enforce the order, police presence on the picket lines was increased significantly. Police officers began to drag away pickets who had locked arms in an effort to block access to the plant gate. Some 115 persons were removed from the area and arrested. Shortly thereafter some 60 officers outfitted in riot gear began to clear the area in preparation for the arrival of several busloads of replacements. This marked the first time that such force had been deployed in Edmonton. As the vehicles approached the plant some 100 pickets broke past police lines and ran towards the buses throwing a barrage of bottles, bricks, and wooden sticks and forcing the vehicles into a "panicked retreat" (*EJ*, June 4: A1). Later, in the afternoon, the buses returned to the plant. City and riot police managed to hold back all but a handful of pickets, thereby enabling replacements to enter the plant for the first time.

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[14] May (1996: 6) provides a map of Edmonton identifying the location of Gainers.

The picket line tension created by Gainers' use of replacements was exacerbated by a series of inflammatory remarks made by Gainer's owner, Peter Pocklington. Pocklington began to refer to striking Gainers' workers as his "ex-employees" and issued promises to replacement workers that they could keep their jobs after the strike even if there was not enough work for the strikers (*EJ*, June 19: B1). Pocklington also stated that he "was not going to have another collective agreement with anyone" and that it was his preference to "deal with employees on an individual basis" and not the union (June 5, 1986: A1). In a CBC Edmonton radio interview, broadcast on June 4 and 5, Pocklington, noted that "we'll negotiate with any employee who wants to come in one-on-one and talk to our employment officer" (*EJ*, June 6; F10), implying that there was no place for the union in negotiations. Union local president commented, "The man never did negotiate, now he gave us the evidence we needed" (*EJ*, June 6: B1). Pocklington quickly condemned the *Edmonton Journal* report, and maintained that his comments had been taken out of context. He claimed that he had actually said that he would not negotiate an agreement with anyone that used "terrorist tactics" (*EJ*, June 6: F10). The pickets, he contended, had behaved like "terrorists" and "bullies" and were using "Gadhafi" and "mob tactics" to get what they wanted. "I cannot negotiate with people", he said, "who act like terrorists and have only one position. They just said they want Canada Packers (contract) and that's it" (*EJ*, June 6, F10). Despite Pocklington's efforts to qualify his earlier remarks by invoking rhetoric that was intended to discredit the union, the *Edmonton Journal* editorial staff stood by its work (*EJ*, June 6: F10).

The controversy surrounding Mr. Pocklington's public statements did little to improve the mood among the striking workers. Pickets continued to gather at Gainers in numbers which far exceeded those specified in the June 2 court injunction. On June 5, approximately 500 people gathered at the plant preventing replacements from entering the plant. Some 98 persons were arrested, bringing the picket-line arrests to 229 (*EJ*, June 6, 1986: A1).

Organized labour's support for the striking workers was considerable since there was a belief that there was a lot at stake in such a high profile strike. Representatives from various labour councils, the Alberta Federation and its affiliates, as well as the building trades joined workers on the picket lines (Selby, 1986). Support for striking Gainers workers, from unions and labour federations across the province and the country, was also forthcoming. Events at Gainers also attracted international attention with the striking workers receiving telegrams of support from countries such as Spain and Chile (*Globe and Mail*, June 9, 1986: A5).President of the Canadian Labour Congress, Shirley Carr, quickly took an interest in the dispute, announcing her plans to visit Gainers' picket lines, and to denounce Pocklington's efforts to discredit the UFCW (*Globe and Mail*, June 7, 1986: A5). The AFL took a particularly prominent role in orchestrating the movement's response to the dispute. A show of support for workers was demonstrated at a May 7 AFL-sponsored rally which was attended by an estimated 3,500 individuals (*Globe and Mail*, June 9, 1986: A5). As a measure to pressure the company into a reasonable settlement with the local, the AFL, as promised, launched a boycott of Gainers' products. Later the CLC joined the AFL and District Labour Councils in the co-ordination of a cross-Canada tour to promote the boycott of Gainers products. The boycott drew considerable support from the public, a reflection of both the sympathy for the workers' cause, and concern over quality control at the plant.[15]

2. Other Disputes in Alberta

On June 2, employees at the Fletcher's Fine Foods plant in Red Deer struck in an effort to win parity with Canada Packers. Fletcher's had presented an offer to its employees containing terms similar to those in the Canada Packers agreement, but then rescinded it, prompting the workers to walk out. Events in the Fletcher's dispute followed a similar course as those at Gainers. Like Gainers, the firm had advertised for replacement workers prior to the strike and had deployed its newly recruited workforce within hours of the strike deadline. At Fletcher's an estimated 300 replacements crossed the picket lines on the first day of the strike (*EJ*, June 3, 1986: B3). Fletcher's efforts to keep the firm operational prompted angry confrontations, injuries, property damage and arrests. As in the case of Gainers, Fletchers responded by petitioning the judiciary to restrict picketing activities. An Order was issued June 5 and enforcement prompted further clashes and mass arrests (*Globe and Mail*, June 6, 1986: A5).

Though Fletcher's employed many of the same tactics as its Edmonton competitor, it was anxious to distance itself from what it saw as Gainers' "union busting activities" (*EJ*, June 11, 1986: E16). Fletcher's officials expressed their willingness to resume negotiations with union officials. Talks continued on June 12 and several days later a tentative agreement, which would bring wages and benefits at Fletchers in line with those at major meat packing operations in Canada, was announced. News of the UFCW's settlement at Fletchers quickly raised the hopes of striking Gainers workers that parity could be theirs too. "The thing to do", commented UFCW, National Director, Frank Benn, is to "take that Fletcher's agreement, which is the national agreement, which is the parity agreement and Gainerize it and end this situation here" (*EJ*, June 15, 1986: A2). Developments at Fletcher's, however, were not enough to effect a settlement at Gainers.

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[15] In September, 1986 the federal government issued a health alert after several people suffered food poisoning after consuming Gainers' products. A number of grocery chains discontinued Gainers products, and at a number of Edmonton Food for Less stores which continued to offer Gainers' meats, consumer support for the boycott was apparent. At one outlet, for example, shoppers repeatedly covered signs displaying prices for Gainers bacon products with "Boycott Gainers" stickers (*Alberta Report*, October 6, 1986).

The highly publicized events at Gainers and Fletchers also raised hopes of a settlement for striking employees at the Lakeside Packers plant in Brooks, Alberta. Workers had been on strike since June 1, 1984 after Lakeside had demanded rollbacks and then continued operations by recruiting a non-union workforce. The days of picket line violence at Lakeside were long gone. Many of the workers had abandoned the strike and had "drifted off to carry on with their lives" leaving only 23 strikers to maintain picket lines.

In addition a number of unions outside the meat packing industry were embroiled in disputes over concessions. Ninety workers at Zeidler's Forest Industries in Slave Lake, Alberta had been off the job since April 11, 1986. The members of the International Woodworkers of America (IWA) wanted a one-year extension of a contract which had expired in the fall of 1985. The company, however, was looking to reduce labour costs, and was asking employees to accept a contract similar to that which had been adopted by employees at Zeidler's Edmonton plant. The Edmonton employees had agreed to a four dollar per hour cut in wages for new employees, reduced holidays and the transfer in control of the employee pension plan to Zeidler's. Slave Lake workers refused to accept these terms and struck. Several months into the strike, on June 5, following a series of incidents of picket-line violence, Justice Cavanagh issued an injunction restricting the number of pickets to 16. Zeidler management mailed letters to striking employees offering them their jobs on the condition that they return to work by June 8 at midnight. Campbell's appeal, however, had the effect of boosting picket line attendance, as workers anticipated the company's use of replacement workers (*EJ*, June 10: F1).

Suncor and 1,100 employees represented by the McMurray Independent Oil Workers (MIOW) in Fort McMurray were also involved in a bitter dispute. Prior to the lockout, which began May 1, 1986, MIOW had been seeking a one-year extension to its recently expired contract, while the company, citing low oil prices and increased costs, wanted workers to accept a pay freeze, reductions in overtime and holiday pay, as well as changes to layoff and severance clauses (*EJ*, May 2, 1986: B5). The company continued operations with non-union and supervisory staff. On May 6, a court order was issued that restricted the number of pickets to 40 at a time. The company had filed for an injunction arguing that the union's activities amounted to a "blockade" (*EJ*, May 7, 1986: B5). Several days later on May 8—election day in the province— 200 pickets were arrested in contravention of the Order. Though the union had made assurances that it would not interfere with the ability of non-union personnel to leave the plant to vote (Reg Baskin, Tape 26, Side A) some 160 RCMP officers were deployed to the area. Angry over what was seen as police "intimidation", workers violated the injunction and were subsequently arrested (*EJ*, May 9, 1986: A1).

The Suncor dispute also created a dilemma for several hundred construction workers who were under contract to continue maintenance and construction at the plant (*EJ*, May 23, 1986; B1). Though they were legally obliged to continue their work, many building trades workers were reluctant to cross MIOW picket lines. On May 23, however, some 350 construction workers staged a two-hour sit-in at the Suncor plant in support of the MIOW cause. The ALRB declared the work stoppage illegal and issued an order that the sit-in cease and desist. Labour denounced the employer's ability to hire non-union staff. Said Vair Clendenning, a representative of the Northern Alberta Building Trades Council: "This government encourages strikes to be prolonged by not having any legislation that protects the sanctity of picket lines". Existing legislation, he insisted, rendered picketing "a joke" (*EJ*, May 24, 1986; B4).

3. Growing Crisis and the Demands for Government Intervention

More so than the disputes in more isolated areas the violence at Gainers in Edmonton quickly became a media event. In the early days and weeks of the strike Albertans were confronted with images of violent confrontations between picketers and city and riot-equipped police. Coverage of the dispute dominated local newspaper, radio and television news headlines and left Albertans with a sense of social disorder and crisis. Intervention by the Alberta government was supported by a number of constituencies. Almost half of the Edmontonians polled in the first week of the strike indicated that they supported some kind of government action (*EJ*, June 6, 1986: A1). Provincial opposition MLAs insisted that the government needed to take action. As Liberal MLA, Betty Hewes commented:

> "...we have six ongoing disputes in the province. The disruption is resulting in employment instability, increased policing and violence. The situation is out of hand..." (*AH*, July 29, 1986: 837).

New Democrat (ND) labour critic, Bryan Strong likened the government's handling of Gainers to its "Say nothing, do nothing and hear nothing" approach to the recent labour relations crisis[16] in Alberta's construction sector (*Edmonton Sun*, June 3, 1986). Federal politicians such as Liberal MP, Sheila Copps urged Prime Minister Mulroney to prevail upon his "good and great friend", Mr. Pocklington, to avert a "potentially ugly and explosive situation" (*EJ*, June 6, 1986: A1). An *Edmonton Journal* editorial implied that the government had failed Albertans: "A good government responds to the needs of its people before they escalate into a crisis" (EJ, June 12, A6). Canadian Labour Congress (CLC) President, Shirley Carr described the Premier's failure to intervene as a "dereliction of duty" (*Globe and Mail*, June 7, 1986: A5). There was thus support for the Premier to step in among business groups that generally opposed government intervention (see *EJ*, June 6, 1986: B10). Dan Horigan, President of the Canadian Organization of Small Business, charged that the conflict had "tarred small business with the same brush" and that Mr. Pocklington was "making all entrepreneurs look bad" (*EJ*, June 13 F12).

a. The New Alberta Government

In 1986 Gainers presented a recently-elected Conservative government with its first post-election crisis. Three weeks prior to the beginning of the strike at Gainers the Progressive Conservatives, led by Premier Don Getty, won their fifth consecutive electoral victory. Though the Premier insisted that he had received a "solid majority", the victory had not been nearly as resounding as in the previous three elections (*Alberta Report*, May 19, 1986: 9). In prior elections, with the exception of 1971, the Tories had faced virtually no political opposition: they took all but six seats in 1975, all but five in 1979, and all but four in 1982 (Tupper, 1986: 780). With the lack of a viable political opposition, Alberta had become known as the "Sleepy Hollow of Canadian Politics" (*Globe and Mail*, June 12, 1986: A5). In 1986, however, the Tories lost 14 seats, six of which had been held by Conservative Cabinet ministers. The number of Opposition seats increased substantially to 22: the Alberta New Democratic Party won the majority, with 16 (up from two in 1982), the Liberals took four, and members of the Representative Party retained two. 1986, thus, marked a shift away from what had amounted to single party rule towards greater political plurality.

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[16] The reference here is to the 25 hour lockout and to spin-offs.

The Tories explained the election results in terms of low election turnouts: less than half (47%) of those eligible to vote cast a ballot, a significant decline from 1982's turnout of 66% (Tupper, 1986; 782). Others presented the Tory losses and low voter turnout as manifestations of an "anti-Conservative protest" (Pratt, 1987: 111). In the early 1980s the provincial economy slipped into recession and, despite government assurances that a turnaround was imminent, by the mid-1980s a recovery was not in sight[17]. In 1986 Alberta's two key industries—energy and agriculture— were both in crisis. Oil prices had failed to stabilize and had continued on a downward spiral. In April, 1986, in the midst of the provincial election campaign, oil prices dropped to 11 dollars a barrel (Pratt, 1987: 105). Alberta farmers struggled as an international trade war forced grain prices ever lower.

4. Government and Judicial Interventions

In the first few days of the Gainers strike, government officials refused to specify what action they would take and generally appeared reluctant to become involved (e.g., see *Edmonton Sun*, June 3, 1986). On June 5, however, Labour Minister, Dr. Ian Reid[18] announced that he had met separately with the two parties and had persuaded them to resume negotiations (*Globe and Mail*, June 6, 1986: A5).

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[17] The effects of these economic woes on the incumbent government were compounded by public perceptions of the Conservative Party and its new leader. In 1985, after 14 years as Premier, Peter Lougheed resigned and was succeeded by former football player, oil magnate and Alberta Minister of Energy, Don Getty. After several months in office, Getty called an election for April 8, 1986. During the campaign there was some concern over Getty's leadership style and competency. Compared to his predecessor, Getty was appeared "too laid back", and appeared to lack a basic understanding of the province's economic position (*Alberta Report*, May, 19, 1986: 9). Getty downplayed and trivialized the hardship that faced many Albertans, commenting: "We'll look back and say it wasn't that tough" (Pratt, 1987: 107). This together with a number of other political gaffes had damaged the Premier's and the Party's credibility (see Pratt, 1987). In contrast the NDP had adopted a sober approach to the province's economic problems, and had presented the electorate with a plan for change.

[18] Previously Reid was Alberta's Solicitor General. During his tenure as Solicitor General Reid had become the subject of some controversy. The Minister was caught speeding by police in March, 1985, but the ticket was subsequently withdrawn, and then again in May, 1986 thus earning him the title "speedy Reid" (*Alberta Report*, May 26, 1986: 18). Premier Getty indicated that the controversy surrounding the Reid's driving record was not a consideration in his post-election Cabinet shuffle (*EJ*, May 27, 1986: A1). Former Minister of Labour, Les Young, was assigned to the technology, research and telecommunications portfolio.

Meanwhile, Gainers had made application to the Courts requesting amendments to the June 2 injunction, including a ban on all picketing activity outside its operations and the removal of the UFCW trailer, which was the site of the union's strike headquarters, from the vicinity of the plant (*EJ*, June 11, 1986: A1). The June 2 Court Order limiting picketing had done little to curb violence around the plant. Edmonton Police Superintendent, Robert Claney, testifying at the Court hearings in support of Gainers petition for injunctive relief, suggested that the mood on the picket lines had grown desperate (*EJ*, June 10, 1986: A1). He reported that pickets had become more organized, and were orchestrating attacks on buses carrying replacement workers before they approached the plant gates. "What we have" Claney argued, "is an escalation of aggressive conduct on the part of not only the union, but hangers-on who have no business being there" (*EJ*, June 10: A1). Claney had been referring to the events of the morning of June 9, when 300 pickets had gathered outside the plant gates. Dozens of pickets lobbed rocks and paint as a bus carrying non-union replacements made its way toward the plant entrance. Twenty police officers were present to respond to the situation and an additional 30 riot-equipped officers came to their assistance. About twenty demonstrators were charged with offenses ranging from violation of the Court injunction to assault with an offensive weapon. June 10 brought more confrontations and 42 more arrests, bringing the total to 308 (*EJ*, June 11, 1986: A1).

On June 10 the Court handed down a second, more restrictive injunction that imposed additional limitations on picketing at the plant. While the order did not reduce the number of demonstrators, additional restrictions were placed on the areas that could be picketed. Justice Cavanagh demarcated a "prohibited zone" around the plant, including the site of the union's headquarters, "where no pedestrians being more than three in number may halt at any time" (Seymour, 1986: 16). Sidewalk pickets were not permitted within 60 feet of the 66th Street and Yellowhead gates and pickets at each of the three plant gates could patrol no closer than 15 feet. The UFCW was also ordered to maintain a log of all individuals on picket duty, and, when requested, to make this available to police for inspection. Public address systems were also prohibited in this area. The most controversial restriction proved to be the ban placed on picketing by non-union individuals. The Order was denounced as "Draconian", and in violation of Section 114(1) of the Alberta *Labour Relations Act*[19] and the freedom of expression and assembly guaranteed by the *Canadian Charter of Rights and Freedoms* (Sheila Greckol quoted in *EJ*, June 11, 1986: A1). Justice Cavanagh explained the severity of his ruling by appealing to the need to maintain law and order. "What I'm trying to do", he argued, was "to restore peace and reduce the risk to our police, who are caught in the middle" (*EJ*, June 11, 1986: E16).

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[19] Section 114 stated: "When there is a strike or lockout that is permitted under this Act, a trade union, members of which are on strike or locked out, and anyone authorized by the trade union may, at the striking or locked out employees' place of employment persuade or endeavour to persuade anyone not to (a)

Following consultations with Dr. Reid, UFCW representatives and Gainers officials met on June 9 for "exploratory talks." The meeting, however, was not productive. Gainers counsel, Phil Ponting, claimed that the firm had offered the wage increases that the union had demanded. UFCW officials, however, denied that Gainers had issued any such offer and that wage issues were presented not as an offer but as a matter of "what if, what if, what if" (*Globe and Mail*, June 11, 1986: A5).[20] No further discussions were arranged and in the union's estimation, no serious bargaining would commence until the government intervened to prohibit non-union workers from crossing the picket lines. John Ventura, Gainers UFCW local President, explained that: "If the government outlawed scabbing that would force the company to get more realistic and get to the table" (*EJ*, June 11, 1986: E16). With both parties offering quite different accounts of the substance of the June 9 meeting, talks broke down. Two days after the talks collapsed the government established a Disputes Inquiry Board (DIB) to inquire into the dispute and to issue recommendations. Dr. Reid appointed Alex Dubensky (formerly Chairman of the Alberta Labour Relations Board (ALRB) and Deputy Minister of Labour) to head a one person DIB. Dubensky was charged with investigating the differences which kept management and labour from a settlement, in both the Gainers and Fletcher's disputes.

D. Competing Narratives on Gainers

In the previous section I provided an overview of early events in the 1986 Gainers dispute. In the section that follows I examine how events at Gainers took on meaning. I show how meaning was produced in the construction of narrative accounts, where causal links were forged between selected events the identification of characters and so on. In the 'New Realities' narrative events, at Gainers were presented in relation to economic changes and the unwillingness of a particular party —the union— to recognize how these precluded Gainers from paying higher

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enter the employer's place of business, operation or employment (b) deal in or handle the products of the employer, or (c) do business with the employer.

[20] Ed Seymour, national representative of the UFCW, charged "there was no, and I emphasize no offer of 51 cents and 52 cents per hour" (*EJ*, June 11, 1986: E16).

wages. I identify two narratives on union legitimacy. In the first Gainers labour is linked to what is characterized as an irresponsible union leadership. In the second account offered by the labour movement the strike is presented as a test of labour's ability to oppose "unionbusting" employers. In another account the government presents the strike as an instance of labour relations as usual.

1. Gainers and the "New Realities" of Business Narrative

Pocklington claimed that the union's demand for parity with Canada Packers was not economically feasible for Gainers. The firm, he claimed, could not afford labour's demands and that workers would instead have to settle with "market" or "community" rates that reflected the "new realities" of business (*EJ*, June 5, 1986: D1; *EJ*, June 6, 1986: F10). Pocklington stated: "I am not prepared to pay more money and benefits in tough times. People are lucky to have a job." The dispute, he insisted, had resulted from the union's unwillingness to accept these realities (*EJ*, June 5, 1986: D1). What counted as undue divisiveness for organized labour was for Pocklington and others a sign of healthy competition in the labour market. Representative Party Leader, Ray Speaker noted:

> It's obvious unemployment in Alberta is up significantly. People are willing to work for less. Even the laborer who is selling his skills must be able to compete in the workplace (*EJ*, June 5, 1986; D1).

Wage levels were, thus, to be tied to the level of competitiveness in the labour market. Opposition leader, Ray Martin derided this view insisting, that this was not "reality" but rather a "turn to the 19th century" and "the law of the jungle" (*EJ*, June 5; D1).

2. Narratives on Trade Union Legitimacy

a. Gainers and Labour "Goons"

Pocklington's assessment of the strike violence also centred on what he saw as the "irresponsibility" of the union (*EJ*, June 6, 1986: F10). His commentary was designed to undermine the credibility and legitimacy of the union. Pocklington accused the UFCW of bringing in "rabble rousers", "international...crazies"[21] and "goons from all over the province" (*EJ*, June 6, 1986: F10). Representative Party leader, Ray Speaker, concurred, charging that the union had failed to provide adequate leadership and that it was responsible for promoting aggressiveness on the picket line (*EJ*, June 6, 1986: B10). Pocklington tried to discredit the union by insisting that it had taken to "mob" and "Ghadafi" tactics and that by demanding parity with Canada Packers and then issuing a strike notice it was engaging in "bully tactic[s]" (*EJ*, June 6, 1986: F10). Pocklington insisted that he would not negotiate with "people who act like terrorists and have only one position". Pocklington was especially suspicious of the involvement of the national and international union in negotiations. It was his preference to "make a deal" with the local or to deal with individual employees (*EJ*, June 6, 1986: F10). Pocklington even noted that Gainers had sent three or four letters to the strikers' families urging them to ignore national and international representatives (*EJ*, June 6, F10).

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[21]. The reference here is to the UFCW.

b. Gainers as a Test for the Labour Movement

For labour, Gainers represented a "test" of the labour movement's strength during difficult economic circumstances (Noel and Gardner, 1990: 45). There was an incentive for labour to ensure that in this high profile dispute a precedent for "union-busting" was not set. Reflecting on the dispute Werlin noted:

> It was a strike which, if won by working people, would stand us in good stead in terms of having demonstrated our ability, our resilience, our ability to fight back and which, if lost, would have set a trend which would have spread throughout the whole country (interview with Werlin in Johnstone, 1987: 20).

Labour saw the strike as a "watershed in the struggle of working people" in Alberta (Werlin quoted in Johnstone, 1987: 20). Local UFCW union officials and striking employees were not unaware of the significance of their fight for parity and the preservation of their union had taken on. As John Ventura, President of the UFCW Gainers' Local, expressed, Gainers was "a labour movement strike, not just our strike" (*EJ*, June 5, 1986: A1).

3. Gainers as "Normal" Labour Relations

The government's first representations of Gainers were made in response to demands that it intervene in the dispute. Two Ministers—the Minister of Agriculture and the Minister of Labour—both came under pressure to act and both expressed a reluctance to do so. The Ministers noted that government mediators were available to the parties and that in all likelihood the strike would be settled presently (*Edmonton Sun*, June 3, 1986). Intervention would only continue if the strike continued for a "prolonged period" and if the interests of third parties, such as Alberta's hog farmers, were placed in serious jeopardy[22] (*EJ*, June 3, 1986: B3; *EJ*, June 5, 1986: D2). To make a case for non-intervention Minister of Labour Dr. Ian Reid — also made a series of statements assessing developments in the strike. "What we're seeing", Reid contended, "was the classic early stage of a strike. There's a lot of emotion involved. That emotion has to settle down..." (*EJ*, June 5, 1986: D2). Later, when asked by the Opposition whether he would "make investigations himself" into the dispute, Reid issued a similar response:

> Those disputes [Fletchers and Gainers] are normal labour relations matters where there is a difference of opinion between the employer's agents and the employees' agents subsequent to the expiry of the previous contract. *Those are normal matters in the labour relations field* (*AH*, June 13, 1986: 12; emphasis added).

By casting the dispute as a typical manifestation of strike-related "emotion", the minister had provided an account of the strike that was in keeping with its preference to leave the dispute to the parties involved.[23]

E. Narratives on Gainers and Alberta Labour Law

1. Gainers as a Labour-Relations Crisis

The government's account of Gainers was difficult to reconcile with other representations of the dispute. In the early weeks of the strike, media headlines, photographs and other images centred on the conflict, fashioning violence as the main "story" in the dispute. There were charges that the dispute was among the most violent in Alberta's labour history (*Alberta Report*, June 16, 1986: 16). Many who joined or observed striking workers on Gainers picket lines did not see the strike at Gainers as a normal expression of strike-related emotion. For them the strike was atypical of

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[22] Strikes at Gainers and at the Red Deer-Fletcher's plant, the province's only two processors of hogs meant that hog producers were faced with the prospect of having no local market for their pigs (*EJ*, June 3, 1986: B3).

[23] Early in the strike, the Labour Minister indicated that though he regretted the violence, he didn't know "what could have been done to avoid it" (*EJ*, June 3, 1986: B3).

Canadian industrial relations practice, and represented a significant deterioration in labour-management relations. This was reflected in the language used to describe the events. Battle metaphors were used with frequency to describe developments at the Gainers plant; "Strike turning to war", noted one headline (*Calgary Sun*, June 4, 1986). Comparisons were also used to underscore the extreme nature of the events. Links were made between Gainers and well-known strikes overseas, such as the British coal miners' strike (*EJ*, June 6, 1986: A7). There was also suggestion that employer activity at Gainers was difficult to distinguish from that encountered in nations with repressive regimes, such as South Africa or Chile (Bob White quoted in the *EJ*, June 10, 1986). Developments on Gainers' picket lines were also considered reminiscent of labour relations of an earlier era. Alberta Liberal leader, Nick Taylor contended that labour relations at Gainers were more typical of "1930s-type warfare between management and labor" (*EJ*, June 5: D2).

2. Gainers and Replacement Workers

For many observers, however, the violence only made sense when viewed in relation to Gainers' labour relations strategy, especially its determination to keep the plant operational. Gainers' use of replacement labour was seen as unusually aggressive:

> Usually it takes time before the two sides get boiling but in this dispute tempers were running immediately because of (half page) newspaper advertisements, apparently advertising their jobs before they went out on strike (James Robb quoted in *The Globe and Mail*, June 7, 1986: A5).

The coincidence of picket line violence and the deployment of non-union labour in other Alberta disputes provided additional support for the narrative links drawn between Gainers strike strategy and the social unrest. The tension on Gainers' picket lines was also linked to Pocklington's comments concerning his intent to retain replacement workers on a permanent basis. Striking workers' actions were desperate, it was argued, because their situation had been made desperate. Not only did it appear that workers might have to forfeit a better contract, but also that they risked losing their jobs. An *Edmonton Journal* editorial commented that:

> Gainers workers, seeking better wages and a more attractive benefits package, see their livelihoods and their jobs threatened by each busload of non-union laborers entering the plant.

Their rage and hostility is evidence of their fear and frustration" (June 5, 1986: A4).

3. The Broader Significance of Replacement Labour

Though the recruitment of replacements during a strike-lockout was not expressly permitted or prohibited under the Alberta *Labour Relations Act* their deployment has been viewed as a "traditionally-accepted employer right" [Arthurs, 1981 #135: 215-216].[24] Although Gainers was judged to have strayed from more typical industrial relations practice, its actions were not in violation of provincial labour relations law. In the context of the picket line violence at Gainers there was a questioning not only of the aggressive manner in which the company had used replacements but also the legitimacy of hiring replacements *per se*. In Alberta Federation of Labour President, Dave Werlin's view, the replacement of striking workers was tantamount to theft. "A scab on a picket line" Werlin argued "is just like a burglar breaking into your house" (quoted in Johnstone, 1987: 21). By challenging the ability of employers to hire replacements, labour and others were also challenging the legitimacy of Alberta labour law. In this way a critical link was drawn between Gainers and the Alberta *Labour Relations Act*: the legislation was seen to have caused the turmoil at Gainers.

Causal links between developments on Alberta picket lines and the province's labour relations statute, the *Labour Relations Act,* were made within a few days of the strike deadline at Gainers. On June 3 the *Edmonton Journal* included its first story that specifically addressed the violence at Gainers in relation to Alberta's labour law; the headline read "Violence blamed on labor laws" (*EJ*, June 3, B3). Subsequent reports contained remarks which presented the law as anachronistic. Ray Martin, Leader of the Official Opposition, charged that Alberta's laws were "outdated" and "pro-management" and that such "backward, Alabama laws" precluded any sense of fairness between the parties (*EJ*, June 5: D2; June 7, B5). Canada's largest national labour federation, the Canadian Labour Congress (CLC), decried Alberta's labour legislation as "barbaric" (*EJ*, June 4, 1986: A3), and suggested that it belonged "in the same basket as Poland, Chile and Guatemala" (*EJ*, June 7: B5). Federal NDP labour critic, Rod Murphy, urged the Federal government to pressure Alberta to "rescind" what he described as a "regressive" labour code.

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[24] In 1986 only one Canadian jurisdiction, Quebec, had taken steps to enact statutory prohibitions on replacement workers. The so-called Quebec "anti-scab" provision was introduced in 1977 in Bill 45. Earlier, in 1973, British Columbia enacted legislation which imposed a ban on an employer's use of professional strikebreakers.

4. The Economy and the Flawed Law Narrative

There were claims that flaws in the *LRA* had been brought into sharper relief by changes in the economy. In 1986 the pool of available labour from which Gainers could draw a replacement work force was relatively large. In this context preventing replacements from accessing plant premises became an imperative for the union–it was a critical source of its bargaining strength. The employer's access to non-union labour, especially during times of high unemployment, labour argued, seriously undermined the UFCW's collective bargaining position. It permitted employers to pit striking workers against the unemployed, which Werlin argued led to a "repugnant" process of "undercutting and underbidding" of wages. Gainers use of replacements, Bryan Strong insisted, amounted to a policy of "economic slavery" (*EJ*, June 4, 1986: H8).

5. The Law and Union Rights

In labour's view, the permissibility of replacement labour played a central role in tipping the legislative scale towards employers[25]. Labour and the political opposition contended that events at Gainers provided evidence that the *Labour Relations Act* was not realizing its objectives: to balance the rights and interests of employers and workers. During legislative debate on the Gainers dispute, ND labour critic, Bryan Strong argued:

> Collective bargaining must be finely balanced if it is going to be successful. It must weigh two competing interests: the economic might of an employer against the collective action of his employees (*AH*, July 10, 1986: 473).

Critics claimed that the law was out of balance, that it precluded fairness on Gainers' picket lines (Ray Martin quoted in *EJ*, June 6, 1986: B10) and that it was "stacked in favour of unscrupulous employers" (Gerry Gibeault, (ND MLA) *Alberta Hansard*, June 19, 1986: 133). From the perspective of labour and Opposition MLAs, the provisions of the *Act* provided a legal climate which favoured intransigent, anti-union employers, and which compromised the rights of working people.

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[25] The law was also considered to favour employers in other ways as well. Unionists also complained that though Gainers and other Alberta employers could readily seek injunctive relief from picketing the union was unable to seek orders restricting a firm's access to replacement labour (*EJ*, June 4, 1986; H8).

6. The Law and Union Avoidance

There were also charges that Alberta labour law could be used by determined employers to avoid their collective bargaining obligations. Citing Pocklington's derisive comments about the union, labour and other observers claimed that Gainers was such an employer. Secretary Treasurer of the Alberta Federation of Labour (AFL), Don Aitken, concluded that the compensation package offered replacement workers (which was markedly better than that for new employees under the 1984 Gainers contract) was further evidence that "money is not the issue, it's breaking the union" (*EJ*, June 4, 1986: H8).

The question of whether or not Gainers was trying to circumvent the collective bargaining process also revived concerns about recent anti-union developments in Alberta's construction sector where contractors had spun-off non-union firms to avoid collective agreements and had used lockouts to void bridging commitments in their contracts (refer to chapter two for more details). The 25 hour lockout whereby employers could hire replacement workers on different work terms[26] meant that there was little to induce employers to negotiate another collective agreement. Since the *Labour Relations Act* was "not designed to impose any particular settlement" on the parties, the employer could operate with non-union staff for an indefinite period. This had been demonstrated in the dispute at Lakeside Packers, which after two years was still operating on a non-union basis. All the employer needed to demonstrate was that he had made "every reasonable effort to enter into a collective agreement" (S. 139 (b)) and that he had bargained in "good faith." Labour maintained, however, that the employer's ability to continue operations in this way amounted to "open season on the labour unions" and union employment (Bryan Strong quoted in the *EJ*, June 3, 1986: B3). There was little to reassure Gainers workers that long-term, if not permanent replacement was in their future. Narratives that traced the source of violence at Gainers to flaws in Alberta's *Labour Relations Act* also gave rise to demands for legal change. Since the law was responsible for "causing the frustration", it followed that a resolution at Gainers warranted legal reforms that would make the law fair (Ray Martin quoted in EJ, June 5, D2).

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[26] There was suggestion that though Gainers was paying replacement workers $8 an hour wages could fall substantially in the future. "A month from now , Gainers may be looking for someone to work for $5 an hour" (ND MLA, Ed Ewasiuk quoted in *EJ*, June 3, 1986: B3).

7. A Changing Government Narrative

Initially, in an effort to defend the decision not to intervene in Gainers, government officials presented the picket line confrontations as a normal manifestation of strike emotion. As critics shifted debate to provincial labour policy, members of the government became drawn into discussion on the merits of Alberta's labour law. The government contested the emerging meaning of Gainers and the LRA by attempting to uncouple the narrative links that had been made between them. Government officials claimed that the law was in no way responsible for the violence at Gainers because the violence was an aberration. This view was even offered by Reid who had previously presented developments at Gainers as normal. Reid described strike violence as an instance of a "rare occurrence that happens when the system does not work smoothly" (*EJ*, June 3, 1986: B3). Premier Getty claimed that Alberta labour law was fair. Getty disputed that the provisions of the *Labour Relations Act* were directly responsible for the violence at Gainers since the statute had a history of placing the parties on an "equal footing" (*EJ*, June 5, 1986: D2). Referring to the disputes at Fletchers and Gainers, Getty noted "one or two circumstances don't necessarily mean the legislation is out of balance" (*Globe and Mail*, June 5, 1986: A4). Voluntarism continued to be a theme in government accounts of the strike. Getty was careful to note that balanced laws also promoted voluntarism: contracts should be achieved without government intervention (*EJ*, June 6, 1986: B10). In a similar vein and in further attempts to isolate the law from the ongoing disputes Provincial Deputy Minister of Labour, Clint Mellors, claimed that the real problem inhered not in Alberta legislation but in the "the two parties' inability to get together over the bargaining table"[27] (*EJ*, June 4, 1986: A3).

The government also located blame for violence at Gainers in a failure on the part of a number of Albertans to respect law's inherent legitimacy. Premier Getty issued an appeal for respect of law, even though its provisions might be unpopular: "The issue is that there are laws. Laws have to be administered and lived up to" (*EJ*, June 5, 1986: D2). Here the "real" problem inhered not within the law per se, but in an unwillingness on the part of some citizens to live by and respect its provisions. Getty, thus, called for an end to the violence and civil disobedience and the resumption of public peace and order: "The laws", he argued, "can't be made in the streets of Alberta" (*EJ*, June 5, 1986: D2). The government had underscored the rule of law.

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[27] Alberta's laws, even if they did not guarantee workers collective agreement rights following a strike/lockout, he argued, could not be held accountable for the violence since "no matter what legislation is in place - they're (i.e. striking/locked out workers) always worried about what happens after the strike".

F. Conclusion

1. Competing Accounts of Gainers: A Summary

A number of competing accounts of events at Gainers were presented in the first few weeks of the strike. Competing meanings, however, emerged from the narrators' selection of contextual information, characters and "events" and the way in which these elements were configured. The economy and labour's unwillingness to recognize its significance in contract negotiations was a salient feature in the 'new realities' narrative. In the union legitimacy narrative blame for the picket line violence was placed on the UFCW. In the government's estimation the strike represented normal labour relations, a view that was contested by labour, Opposition MLA, and others as extreme. The strike also took on meaning in relation to the issue of replacement labour, a connection that was also used to link violence at Gainers to Alberta labour law.

Labour law was not immediately implicated in government accounts of the strike. Initially the government tried to justify its policy of non-intervention in the dispute by portraying the unrest as normal, and as a matter for the parties to settle themselves. Later, however, the government was drawn into debate about the connection between Gainers and provincial labour law. In defense of Alberta labour law, and in an effort to depoliticize the *LRA* and Gainers, government officials maintained that events at Gainers were aberrant, and were in no way indicative of flaws or imbalances in the legislation. Instead the government tried to locate responsibility for the strike elsewhere, pointing to a number of troublemakers who had shown little respect for the law.

Labour, Opposition MLAs and others identified flawed and anti-union labour law as the "real problem" behind the dispute (Alderman Julian Kinisky quoted in EJ, June 5, 1986: D1). For labour, an employer's ability to hire "scab" labour was the chief link between the violence and the *Labour Relations Act*; it had "provoked" the confrontations.[28] For others it was the ambiguity of the employment status of replacement labour that was the chief problem. Concern about Gainers' intentions to avoid dealing with the UFCW also raised concerns about other aspects of the *LRA*. Links were drawn between Gainers and labour relations practices that had developed in the Alberta construction sector: the 25 hour lockout and spin-offs. Problems in the legislation, moreover, were purportedly made more prominent by economic context: by an economy in recession. Connections were also drawn between Gainers with other on-going labour disputes in the province. The disputes at Suncor, Zeidler's and elsewhere did not attract nearly the same media attention as the strike at Gainers, but their importance in creating a sense of crisis in the province and in the politicization of Alberta labour laws should not be understated. Critics of the *LRA* maintained that, viewed together, the meat packing and other disputes highlighted problems with the legislation, especially with replacements. The conclusion of those who saw Gainers in terms of flaws in the LRA was that legal reform was imperative.

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[28] New Democrats even presented the strike as a prophecy fulfilled, noting how their former leader had predicted in 1983 that Albertans would "fight back" against bad labour law and that the Minister or his successor would "face a heck of a lot of headache in the years ahead" (Ray Martin in *AH*, June 13, 1986: 21). Notley however, had made this argument in respect to different aspects of the legislation: the changes affecting workers in the hospital sector.

The law was not a concern in Pocklington's account of the confrontations of the dispute. Like government officials, Pocklington attributed the unrest to troublemakers, though he also made specific reference to the UFCW leadership, particularly at the international level. The economy was also a central theme in Pocklington's account. Pocklington contended that the union had failed to communicate the new realities of business to striking employees. While labour explained the violence as resulting from workers' fears of permanent job loss in a period of high unemployment, Pocklington saw the dispute as the outcome of the union's unwillingness to come to terms with what had become a competitive labour market. The union's proposals, he insisted, were unrealistic because they reflected a reluctance to accept the transformations in the meat packing industry, in both Canada and the United States. It followed, then, that a solution to the problem was for the union to accept the new realities of business where wages and benefits would be derived from the "the market" (i.e., what Gainers was willing to pay).

2. A Preferred Account of Events

The various attempts to explain the confrontations at Gainers did not have the same appeal. Pocklington's attempts to indict the union for its failure to come to terms with the new realities and the market were undermined by his own rhetoric and treatment of his striking workers. Pocklington's public commentary not only undermined support for his own position but also created public sympathy for labour and therefore lent more legitimacy to its claims about the law. Reassurances from government officials that events at Gainers were normal were difficult to sustain given the level of violence and the police response. As Liberal Leader, Nick Taylor, noted, "The fact that we've got national attention—to the shame of Albertans—makes it obvious something is not working" (*EJ*, June 6, 1986: B10). Many Albertans appeared to accept that that "something" was indeed the state of Alberta's labour relations system: it seemed the preferred account of events. In a June Angus Reid poll, 40 per cent of respondents agreed that the law was biased against labour and in need of revision, while only ten percent thought that the law should be amended to favour management (*EJ*, June 27, 1986: A1). Some five thousand lawn signs displaying "Boycott Gainers - Change the Law" also appeared around the city of Edmonton (Nikiforuk, 1987: 38). Sympathy for Gainers workers had translated into sympathy for labour law reform.

Such developments were a tremendous boon for the Alberta labour movement. They finally gave credence to labour's long-held complaints about the *Labour Relations Act* and support for a reform initiative. Capitalizing on this support and sympathy labour continued to lobby for legal reform. Though the government was quick to defend provincial labour law, as debate continued on the matter, government officials noted that a legal review was not out of the question. In reference to the *Labour Relations Act*, the Premier remarked, "There is nothing sacred about it. If it doesn't do the job, it's always possible to change it, and we would" (Ibid). Labour Minister, Ian Reid, also indicated that he was prepared to review Alberta's labour legislation. "I intend to look at all the labour legislation to see if we can avoid this kind of thing" [i.e. Gainers] (*Edmonton Sun*, June 3). Reid was careful to qualify these remarks, however, noting that it would be inappropriate for him to consider legal change in the context of a labour dispute. This approach to change was in keeping with its efforts to separate the law and the strikes. Later he indicated that it was his intent to wait and to begin his review after the conclusion of the next session of the Legislature, which was set to commence on June 12.

Despite the Labour Minister's remarks, organized labour pressed for a much firmer commitment for legal change. Armed with public support, labour mobilized its resources. Advertisements sponsored by the AFL and the Alberta Building Trades Council appeared in Edmonton newspapers asking readers to attend a rally outside the Legislature coinciding with the opening of the legislature and the Government's Speech from the Throne on June 12. The ad began:

> Striking workers at Gainers and Fletchers and throughout the province are fighting for their very jobs and livelihood against unethical, strike breaking employees.
>
> They have to contend with Alberta labour laws that have placed the courts and the police at the disposal of employers. (*EJ*, June 11, 1986: A15).

The ad also set out what attendance at the rally would mean. By attending the demonstration citizens could "let the government know that Albertans will not tolerate unjust labour laws that encourage attacks on working people" (Ibid). An estimated 8,000 supporters attended the union-sponsored rally, making it the largest demonstration to march on the legislature since the hunger marches of the 1930s (*Globe and Mail*, June 13, 1986: A4: Selby, 1987). Organized labour had demanded that the new government make a commitment to a program of labour reform in its upcoming Throne Speech. In the early drafts of the Speech, however, no mention was made of labour unrest or the province's labour laws (see Noel and Gardner, 1990: 67 (footnote 79)). Faced with mounting political opposition and social unrest, the government finally elected to include a statement outlining its intent to review the province's existing labour legislation.

3. Concluding Remarks

There was no single objective account of events at Gainers. Instead the strike took on meaning in a number of competing narratives. In this chapter I have outlined how efforts to make sense of Gainers played a critical role in the problematization of Alberta's *LRA* in 1986. The government's decision to review provincial labour law was the outcome of a struggle to impose meaning on the dispute. The narratives were not equally persuasive. Accounts which linked the strike to the 'new realities' of business and to the UFCW were undermined by Peter Pocklington who assumed the role as "villain" in the dispute. The government's assessment of the strike as normal and as requiring a voluntarist solution did not appear credible given the level of violence. In contrast, narratives linking the confrontations at Gainers to the problems in Alberta labour law appeared to have a much wider appeal. The workers appearance as victims in the dispute—as victims of a villainous employer and of a heavy-handed police response—created considerable public sympathy for labour. The public supported labour and its assessment of the strike. The effect of these circumstances was that the government's power to direct debate on the Gainers strike and labour law was held in check.

As the violence persisted, the *Labour Relations Act* became an ever more salient feature of public discourse on Gainers, so much so that it began to rival picket-line violence as the main story. In spite of government efforts to present the *LRA* as fair and balanced, the appeal of the flawed law narrative was sufficient to force the issue of provincial labour laws on to the government's formal political agenda. In chapter four I will examine how this review was pursued and how various constituencies continued to struggle over the meaning of labour law.

V. Narrative and the Construction of Legislative Proposals

A. Introduction

Picket line violence at the Edmonton Gainers plant and the sense of crisis that this created was instrumental in the problematization of the Labour Relations Act in the summer of 1986. In Chapter four I argued that focus on the *Labour Relations Act* (*LRA*) was a reflection of the relative significance and persuasiveness of the flawed law narrative. My task in Chapter five is to trace understandings of law from the time of the government's announcement that it would review the Alberta labour legislation to the tabling of Bill 60—the *Alberta Labour Code*— in June, 1987. I am interested in the extent to which narratives on Gainers continued to inform debate on legal change, as well as the way in which other ideas were drawn into and altered debate on the law. Toward this end I consider the ideas and arguments presented in the almost 300 briefs that were submitted to the government appointed committee, the Labour Legislation Review Committee (LLRC) established to examine the operation of Alberta's labour legislation. I then examine how the LLRC responded to these ideas and ultimately how these were/were not reflected in Bill 60.

B. Background to the Alberta Labour Review

1. The Government's Commitment to Review Alberta's Labour Legislation

Though the Alberta government had challenged the narratives that linked the *LRA* to the strife at Gainers, its own portrayal of the dispute did not prove sufficiently persuasive. As a result there was considerable pressure for the government to respond to demands for legal change. In this context the government added a clause to its June 12, 1986 Throne Speech noting that:

> A full review of labour legislation will be undertaken [...] and necessary amendments will be proposed to assure that the laws of the province, for the present and for the future, will be responsive to the needs and aspirations of employers and employees (*AH*, June 12, 1986, 5).

Viewed alone the statement seemed neutral. When viewed in relation to the recent events, it was clear that it was not. The statement was noticeably silent on Gainers and the legal issues that had been raised during the strike. This seemed compatible with the government's strategy of separating Gainers from legal concerns. The length and location of the statement also suggested that labour law was not a top priority for the government. While many of the other issues addressed in the Speech were examined in some detail, the labour review was outlined in a single sentence which was, as one editorial noted, "buried" in the "odds and ends section" of the Speech (*Globe and Mail*, June 13, 1986: A7). The statement was described as "grudging" and seen as a "last minute" addition to the text (AFL submission (57) to the LLRC: 2).

The statement afforded the government considerable latitude. By not guaranteeing specific changes the government had provided itself with a measure of flexibility in the review process. The selection of the term "review" rather than "reform", the latter suggesting that the existing law was in some way problematic and that change was imminent, conveyed that legal change was a possibility, though not an inevitability. As one editorial noted, the statement "promises everything and...promises nothing" (*Globe and Mail*, June 13, 1986: A7).

Though the government had challenged narratives that linked violence at Gainers to the *LRA* , its promise to review the legislation placed it in a rather awkward position. On one hand, it had defended the *LRA*, arguing that its contents were unrelated to the ongoing labour disputes. On the other it was difficult to disentangle the law from prevailing understandings of events at Gainers. Moreover, the government had not provided an alternate rationale for the review. The Throne Speech had made only vague reference to the need to ensure that the law met the "needs and aspirations of employers and employees". The government was thus faced with the challenge of constructing a justification for the review that did not involve Gainers or the other summer disputes. To see how the Tories began to construct such a rationale, I will now turn to political debate on legislation introduced by the New Democrats, the Official Opposition.

2. Creating Alternate Explanations for the 1986 Legal Review

a. Bills 206 and 229

The measures included in the New Democrats' Bill 206 and Bill 229 were presented as antidotes to the imbalances in the *LRA*. The Bills, tabled shortly after the Throne Speech on June 16 and June 17 respectively, were a represention of the flawed law account of events at Gainers. Bill 206[1] prohibited the employer from hiring replacements during a strike-lockout and guaranteed striking workers their jobs. This meant that Pocklington and other employers would be prohibited from giving priority in employment to strike replacements, a development which had been used to account for the volatility on the Gainers picket lines (*Globe and Mail*, June 13, 1986: A4). The amendment read:

> No employee so returning shall be dismissed or laid off by reason of having been supplanted by an employee engaged by the employer during a strike or lockout (s. 81(2)).

In banning "strikebreakers" Bill 206 was expected to remove the existing "incitements to violence" and to promote "meaningful" collective bargaining (Strong quoted in *AH*, July 10, 1986: 474). Bill 229[2] addressed the matter of the 25 hour lockout, which had been an issue for labour since 1982-3. The purpose of the Bill was to "restore the legitimacy of so-called bridging clauses" (Strong quoted in *AH*, June 17, 1986, 51). The Bill stated that where no collective agreement was in force, employers were prohibited from unilaterally altering the terms and conditions of work and from hiring new employees on terms that differed from those contained in the most recent collective agreement[3].

b. Narratives on Rights and Balance

The government used a number of strategies to discredit Bill 206 including ideas about rights and legislative balance. The government did not dispute that balance was a worthy objective. Conservative MLA Fred Stewart indicated that labour law should provide an environment in which collective bargaining could be conducted in a "balanced and fair manner" (Stewart (PC) quoted in *AH*, July 10, 1986: 475). The government, however, contended that the proposed provisions, especially the ban on replacement labour, were contrary to the "principles of fairness and equity" of labour relations because they tipped the legislative scales too far in labour's direction.[4] If the Opposition was so concerned with obtaining balance it should also have prohibited employees from seeking alternate employment and from receiving strike pay. Stewart commented:

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[1] *An Act to Amend the Labour Relations Act.*

[2] *An Act to Amend the Labour Relations Act (no. 2)*

[3] These provisions were to be added to section 137(3) which set out prohibited practices for employers and employer organizations. The Bill also amended section 80(2) of the *LRA* so that the parties could agree to continue the operation of the collective agreement "until the commencement of a lawful strike or lockout". The *LRA* stated that an agreement could be continued "while the parties bargain collectively".

> The balance of bargaining strength...is the very essence of labour relations legislation. If the employer is to be denied the possibility of continuing operations with temporary employees and maintaining some cash flow, then I would think the sponsor of this Bill would have suggested that the employees should likewise be denied the possibility of personal cash flow. However, Bill 206 is totally silent in this regard (*AH*, July 10, 1986; 476).

For Stewart the risk of lost production resulting from a ban on replacement labour was the equivalent of the risk of lost pay resulting from a ban on alternate employment.[5] Both parties recognized the importance of obtaining balance, but the term was used in different ways. The New Democrats' legislation was designed to achieve balance by limiting employer activities during work stoppages. The government did not see one party requiring protection from the other, but presented employers and workers as equals.

Stewart claimed that drafting legislation in direct response to the summer's disputes would also thwart balance. According to Stewart balance could only be achieved when the law had been examined in its entirety so that "unwanted consequences" in other areas of the legislation would not result (*AH*, July 10, 1986: 476). A legitimate legislative review was one that would examine industrial relations in a "general manner", so that the law would have "equal application" to a range of industries, employers, regions and regional economies (*AH*, July 10, 1986: 475). Premier Getty noted that because labour legislation was "such a matter of balance" it was necessary to look at the "total package of laws" (*AH*, July 10, 1986: 485). From this line of argumentation the government tried to construct the Opposition's bills as "piecemeal" and as "irresponsible" (Stewart in *AH*, July 10: 475). In contrast the government maintained that its own review would be a comprehensive, "fully consultative" and thus "far more appropriate" initiative (Ibid: 475). The review outlined in the Throne Speech was presented as the only appropriate action that the Government could take since balanced proposals for change would only result from a "full" legislative review.

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[4] The amendment which explicitly guaranteed striking/locked out workers their jobs following the conclusion of a work stoppage was seen as unnecessary. Early in the Gainers dispute, Labour Minister, Ian Reid, as part of his effort to counter the view that the *LRA* was flawed, had tried to reassure striking Gainers workers that their jobs were protected by statute. During debate on Bill 206 this argument was reiterated. Such rights, it was contended, were already enshrined in Section 137—which stated that the failure to continue the employment of a worker who had participated in a strike constituted an unfair labour practice. Though the government maintained that the *LRA* had already provided such guarantees, it was unwilling to include a statement that affirmed this right more forcefully.

[5] Stewart argued that increased bargaining power for unions would inappropriately increase membership levels and render union bargaining more effective. An rise in union membership was not viewed as a positive development. Stewart's statement is suggestive of the government's views on union legitimacy.

c. Narratives on the Economic Change and Competitiveness

The government insisted that balanced law needed to be flexible so that its provisions would receive equal and fair application in a range of industries and regions and under varying economic circumstances. Drafting legislation that "deal[s] restrictively with one set of economic conditions as they exist at a given point in time" was seen as highly inappropriate. It was, therefore, inappropriate for the Opposition to draft legislation that attempted to boost worker bargaining power in the midst of high unemployment (Stewart, *AH*, July 10, 1986: 475). According to the government labour law needed to be sufficiently flexible that it would operate fairly in both "good [economic] times and bad". There were also complaints that Bill 206 was not "in step with current circumstances". There were, Stewart claimed, "fundamental changes" occurring in the economy that needed to be considered.

> ...we are no longer an island to ourselves, and world markets and exports have taken on a new significance in our economy. We must compete, and there is a growing awareness that to do so effectively will require all of our costs of production, including labour, to be reasonable in the circumstances (*AH*, July 10, 1986: 475).

Bill 206 was also criticized because it was not "in step" with these changes. Reviewing the law was presented as a necessity, but not because of developments at Gainers, but because of changes in the economy. The labour Minister's review, Stewart noted, was "a recognition that things are indeed changing out there" (Stewart quoted in *AH*, July 10, 1986: 476). The government clearly wanted to discuss labour policy in relation to the globalisation of trade and increased competition rather than a politically charged labour dispute like Gainers.

Though Bill 206 was not pursued, the debate on its proposals is significant because its allows us to see how the government had begun to try to construct a rationale for its labour review. In finding an alternate explanation for the review initiative in narratives on competitiveness the government was better able to resist the specific demands that had emerged from critical narratives on Gainers. It provided a way to deflect attention away from the labour strife, which had dominated public discourse in June, and to ground discussion of labour law in more abstract and less emotive concerns. Such efforts remained tenuous as long as the strike at Gainers, which had galvanized Alberta labour, remained unsettled[6].

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[6] Government efforts to solve the Gainers dispute were without success. Coincident with the debate on Bill 206, the disputes inquiry board (DIB) which had been appointed on June 11 to investigate outstanding issues in the Gainers and Fletcher's strikes, issued its report. Dubensky, chairman of the one-person DIB, urged Gainers to recall all striking workers who had been employed on the eve of the strike and advised the union to cease its boycott of Gainers products. He also recommended Gainers increase hourly wages by $1.03 over two years, in line with the industry pattern, though he rejected the union's demands for parity in start rates ($9.38), arguing that this would amount to unacceptable increases of at least 19 percent. Since settlements were then only averaging between 2 and 5 percent, and unemployment was in excess of ten percent, Dubensky concluded that "a settlement increase of 19-20 percent would not be realistic" (ALRB, 1986: 17). "Economic realities", Dubensky argued, had served as the basis for all his recommendations (Ibid). Though the Edmonton press took a favourable view of Dubensky's report, describing it as "scrupulously objective" and a "reasonable" effort at compromise, it did not serve as a catalyst for a settlement (*EJ*, July 11, 1986: A7; July 12, 1986: A6). On July 25 both sides formally rejected the Report, with the strikers voting 94.6 percent against its acceptance (*EJ*, July 26, 1986: B1). Pocklington applauded Dubensky's efforts to settle the dispute, but indicated that the rehiring of all striking workers as well as the withdrawal of charges against individual strikers were unacceptable contract terms. Hiring back striking workers, he argued, would prevent him from continuing to employ all non-union personnel to whom he had promised permanent jobs (*EJ*, July 26, 1986: B1). Union officials claimed that Dubensky had not responded to union demands for higher start-rates, the elimination of forced overtime and that replacements not be retained by Gainers on a permanent basis. During DIB hearings the UFCW learned that, on the eve of the strike (May 31st), Gainers had taken unilateral steps to cancel the employee pension plan. Following news of this action, labour began to demand legal change in the rules governing employer access to pensions.

The DIB had a number of implications for debate on the *LRA*. In addition to making recommendations aimed at settling the Gainers strike, Dubensky broached the issue of legal change. At the end of his report he noted:

> It would be our suggestion to the Minister of Labour that serious consideration be given to examining the Labour Act particularly in the area of replacement employees. Since there are several options we will not specifically suggest any one (ALRB, 1986: 17).

In failing to suggest specific changes to the *Act*, Dubensky was criticized for being too conservative and for avoiding controversy (*EJ*, July 11, 1986: A7). Immediately following the release of the Report, the government was questioned about its plans to act on the recommendation. The government sidestepped the issue by stating that the absence of any specific proposal meant that Dubensky had "obviously left it to the review to take place and to make that decision" (Reid quoted in *AH*, July 10, 1986: 462). The government also continued to be dismissive of complaints about the law. Regarding doubts about the continued employment status of striking workers, Reid conceded that the law "could be stated more clearly", but suggested that objections to the law amounted to quibbles over legal interpretation: "It's a minor semantic

C. The Labour Review is Established

1. The Labour Legislation Review Committee (LLRC)

Despite speculation that the government would not commission a review, on August 1st Labour Minister, Ian Reid announced nine appointees to a review committee. The Labour Legislation Review Committee (LLRC) was comprised of three representatives from the business community, three from labour and three from the general public and was to be headed by the Labour Minister.[7] Reid indicated that the LLRC's mandate was to "thoroughly consider the principles and functions of the existing legislation and..[to].review its operation over the past 12 years" (*AH*, August 1, 1986: 929). Reid made no reference to the summer's labour strife, consistent with earlier efforts by the government to distance the review from the summer's events. Instead the government noted that a review of Alberta labour legislation had been under consideration for some time[8].

2. The LLRC and the Prospect of a 'Balanced' Labour Law Review

a. The LLRC Appointments

Organized labour claimed that the LLRC would be unable to conduct a fair labour review because of concerns it had about the structure of the Committee and the protocol that had been used to select the three labour appointees.[9] AFL President, Dave Werlin insisted that the inclusion of three

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matter, not a matter of intent or philosophy" (*EJ*, July 11, 1986: A7). Semantics and legal interpretations, however, had had material consequences on Alberta picket lines.

[7] The appointees included: Budd Coutts, vice-president of the Union of Operating Engineers; Wallace Daley, a Granum rancher; Michael Day, Red Deer City Commissioner; Sheila Embury of Calgary, a retired professor of nursing and former MLA; Rick Forest of Edmonton, president of Forest Construction; Norm LeClaire of Lethbridge, business representative for the UFCW; Bernice Luce, a Ponoka farmer; Jack Murray of Calgary, Alberta regional director of CUPE; and Murray Ross of Edmonton, manager of human resources and plant services at Celanese Canada (*AH*, August 1st, 1986: 929).

[8] Reid stated that:

> ...in the [June, 1986] throne speech the government gave its commitment to a full review of labour legislation, *reinforcing statements made by the Premier since last fall and by myself since my appointment to the portfolio* (*AH*, August 1, 1986: 929; emphasis added).

[9] The Official Opposition took issue with the review committee prior to its announcement. On July 31st, 1986, the New Democrats made a motion that the review of the *LRA* be referred to the Standing Committee of the Assembly on Public Affairs. As part of the motion the Committee was directed to conduct hearings at the Legislature and not less than five centres across the province, and then to issue any recommendations for improvements to the *Act* by November 30, 1986 (see *AH*, July 31, 1986: 900). The appointments further strained relations between the government and the AFL. Publicly, relations began to

representatives of the public meant that the Committee was weighted against labour: it was "badly flawed" (*Edmonton Sun*, August 3, 1996: 19). In this way the Committee was not unlike the statute it was supposed to review (i.e., the *LRA*). Werlin and Alberta Building Trades Council (ABTC) leader, Vair Clendenning, both expressed outrage that the government had not consulted with their organizations about labour appointees. Werlin argued that labour's "deliberate exclusion" amounted to an "end-run around the official trade union movement" (*Edmonton Sun*, August 3, 1986: 19; *EJ*, August 2, 1986: A1). There was a view that the government had purposefully avoided the labour centrals and had hand-picked labour officials who did not see the LRA as flawed (*EJ*, August 2, 1986: A1). ND Leader, Ray Martin, charged that the government had refused to consider naming labour leaders who subscribed to the view that the law was "incorrect and unjust" (the flawed law narrative) and that in failing to consult with the AFL and the ABTC, the government had precluded a "fair assessment" of the law (*EJ*, August 1, 1986; B1; *AH*, July 31, 1986: 894). To protest the appointment protocol Werlin urged the newly appointed labour representatives to step down. Two of the three labour appointees succumbed to AFL pressure and resigned.[10]

Following news of the resignations individual unionists began to volunteer their services to the Committee. In reference to this development, Werlin commented:

> I can assure you that none of the so called union leaders represent the AFL. ..And without the sanction of a union

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deteriorate between "openly Communist", AFL President, Dave Werlin, and Premier Getty before Reid's announcement of the appointees (Noel and Gardner, 1990: 48). On July 31st Opposition Leader, Ray Martin, demanded the labour minister confirm that he had not solicited nominations from either of Alberta's labour centrals—the AFL and the Alberta Building Trades Council (ABTC). The Premier implied that this was the case, noting that he had tried to meet with AFL President, Dave Werlin, several months earlier, and that in his view, Werlin had made comments that "Alberta Labour should totally disassociate itself" from (*AH*, July 31, 1986: 894). Getty seemed to be reacting to statements made by Werlin in May concerning labour's intention to "declare war" on Gainers in the event of a strike (see *EJ*, May 31, 1986: A1). The Premier's "likes", Martin suggested, should be of no consequence in the government's dealings with the AFL (Ibid). Werlin, it was argued, was labour's duly elected representative. Getty countered that "The Premier of this province doesn't like him: that's for sure (Ibid) and later noted that "He's declared war on the people of Alberta and he's committed to unrest in this province... And I don't like people who do that" (*EJ*, August 2, 1986: A1). Werlin's declarations took on important significance in light of events at Gainers. They allowed Getty to portray Werlin as an agitator, and to hold him responsible for "encouraging" strike violence around the province. This in turn provided a way to argue against consultation with a radicalized labour movement that had a specific agenda for legislative change. Relations between labour and Getty were further undermined when Getty twice crossed ALCB picket lines (see *EJ* Aug. 6, 1986: B1).

[10] Several weeks after the review was announced Norm LeClaire resigned from his LLRC position noting that Werlin had persuaded him that it "was in the best interest of labour". LeClaire's resignation was followed shortly by that of Jack Murray. Two replacements were promptly appointed, again without consultation with the federations: Joe Berlando of the Alberta Teachers Association (ATA) and Larry Kelly of the Alberta and Northwest Territories Council of Labor.

> central, these people speak only for themselves and not for labor (*EJ*, August 21, 1986).

Labour also claimed that by failing to consult with Alberta labour federations, the legitimacy of the LLRC was in question. For the Committee and the review process to be credible the government was obligated to consult with provincial labour centrals. Others were sympathetic to labour's view that the AFL and the ABTC were more than interested parties; they were the "cornerstones" of Alberta labour and should have been consulted by the government (*Calgary Herald*, August 21, 1986). Others made the case that in revising the law the government was duty bound to listen to labour.

> The Alberta government is fumbling this process...It does no good to blame particular union officials for their political sentiments or their expressions of solidarity with one another. The government's job is to co-opt to the greatest degree possible all points of view to make laws that protect affected parties and ensures (*sic*) realistic negotiations (*Lethbridge Herald*, August 21, 1986).

There was a view that government consultation with interested parties, including the labour federations, would make for a fair evaluation of Alberta labour legislation and balanced proposals for change.

The government contested labour's charges that the review was imbalanced. Reid noted that labour had equal representation with business and the public and that the LLRC's structure had been announced a month earlier (*EJ*, August 1, 1986: B1). To further undermine labour's claims that the appointees were unrepresentative of labour, Reid noted that two of the unionists—Norm LeClaire, business agent for the UFCW, and Jack Murray[11], Alberta regional director of the Canadian Union of Public Employees—were both "senior members" of AFL-affiliated unions (*EJ*, August 2, 1986: A1). Following the resignation of LeClaire and Murray, Reid indicated that he did not intend to consult the AFL about replacement panelists since all nine members had been "selected as individuals" and were not "representatives of those from whom they come" (*Edmonton Sun*, August 24, 1986: 15). Such a claim, however, seemed incongruous with the way in which the government had structured the review body (i.e., representative of three constituencies).

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[11] AFL secretary-treasurer, Don Aitken tried to make a case that, as members of the Alberta Labour Relations Board (ALRB) which was responsible for the interpretation of the *LRA*, LeClaire and Murray could be facing a conflict of interest.

b. The LLRC's Travel Itinerary

Questions about balance and fairness were also raised in connection with the way that the Committee was to undertake its review. In his August 1st announcement of the LLRC appointees, Reid indicated that the Committee would travel to learn "firsthand" about useful concepts that might be adopted from "comparable" labour law in other industrialized jurisdictions (*AH*, August 1, 1986: 929). On August 22nd Reid noted that his Committee would travel to West Germany, Britain and the United States. Several days later he announced that the LLRC's itinerary would be expanded to include Japan, Australia and New Zealand.[12] The decision to travel abroad was significant for government narratives on the law because it suggested that the focus of the review would be broadened further, and not limited to labour relations in Alberta or Canada. This strategy was consistent with earlier narratives in which the Tories had tried to reorient debate away from developments at Gainers.

Labour claimed that the Committee would not get a chance to observe fair legislation. AFL official Don Aitken commented with reference to the United States and Britain: "They won't learn anything progressive talking to two right wing governments. They'll probably just learn how to keep their workers under their thumbs...they should go to Sweden and look at some decent labour laws" (*EJ*, August 24, 1986: A2). There were also charges that if the government was really interested in improving Alberta's labour laws it should focus on the recent labour relations developments at home. Critics suggested that "a sail down 66th street", a reference to the Gainers dispute, would fair "just as well" as the Committee's proposed six-nation tour (*EJ*, August 29: B1). There was speculation that overseas travel was a way for the government to avoid addressing the disputes at Gainers[13], Suncor[14] and

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[12] Reid also indicated that LLRC members would each receive a per diem payment of 250 dollars. The announcements struck a public nerve and the government was widely criticized for an initiative that, in the context of high unemployment and fiscal restraint, was perceived as excessive and a "transparent bit of extravagance and time-wasting" (*Edmonton Sun*, August 28, 1986: 10). Critics contended that the Committee's plans were not in the public interest. Members of the opposition parties quickly seized on the opportunity to cast the LLRC as a junket. They spoke about the Minister's "world tour" and "odyssey" as being "obscene" and a "tremendous waste" of taxpayers' money (*EJ*, August 27, 1986; B1; August 23, 1986; A1). In the context of this debate the panel was dubbed "Speedy Reidy and the Jet-Setters", an unfortunate designation that did little to bolster the Committee's credibility (Ray Martin, quoted in *AH*, August 27, 1986: 1335).

[13] The parties in the Gainers dispute did make attempts to negotiate a settlement. On September 4 and 5, company officials (including, for the first time, Pocklington himself) met with union representatives, their first meeting since mid-July (*EJ*, September 6, 1986: A1). The talks broke down chiefly over the issue

Zeidlers[15] that had forced labour reform in to the public spotlight[16]. One editorial wrote that:

> On the face of it, these proposed travels are such a monstrous, tasteless, junketeering boondoggle that we suspect there must be reasons beyond mere wanderlust involved here.
>
> Our suspicion is that these travels are part of a calculated exercise in wheel-spinning, embarked upon for the sole purpose of wasting time in the hope that current labor/management passions will abate of their own accord (*Calgary Sun*, August 28, 1986).

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of replacement labour. Pocklington continued to insist that upon settlement of the dispute the 700 or so replacement workers would be given priority in employment over striking unionized workers. The union indicated that it was not prepared to compromise on such "gut" issues (Ibid). A month later the parties had not yet resumed negotiations. Though the government had noted its reluctance to intervene in the dispute directly, Getty stated that it was "frustration" that prompted him to hold talks with both sides (*EJ*, October 8, 1986: A1). Getty reportedly informed Pocklington that the strike was "unsettling" and creating a "rift in...society" (quoted in Nikiforuk, 1987: 39). No settlement materialized, however.

[14]. Following efforts in the summer to negotiate an end to the Suncor dispute, Suncor management and MIOW finally came to an agreement in October. In late July the union membership had overwhelmingly rejected the company's July 25th contract offer (*EJ*, October 2, 1986: B4). Suncor subsequently filed a ULP with the LRB maintaining that the union had deliberately misrepresented its offer to its membership. On September 8, the Board ruled that the charges were unfounded. In mid-September the dispute was reported to have reached a "stalemate": Suncor indicated that its July 25th offer was its last, an offer that the union rejected as inadequate (*EJ*, September 19, 1986: B5). As at Gainers and Zeidlers, replacement labour was a contentious matter. The company demanded the right to employ non-union workers in positions previously held by unionized employees. By late September, anxious to return to work, a small contingent of workers began to pressure the union executive for a ratification vote on the company's last offer. The petition was postponed as hopes for renewed talks increased. On October 10 an agreement was reached, which guaranteed striking workers their jobs back, and which improved severance and layoff provisions. The agreement also called for a series of concessions, including a cut in overtime rates and possible future wage rollbacks. Three days later union members voted 79 per cent in favour of the deal (*EJ*, October 14, 1986: A11).

[15]. Talks resumed in early September after an almost two month-long hiatus, but failed to produce an agreement largely because of disagreements over the status of replacement workers. Reports from IWA officials indicated that the company proposed to continue to employ replacements and to rehire strikers on an as-needed basis. There were also reports that the company was unwilling to take back individuals who, due to developments on the picket lines, had become "undesirables" (Neil Menard, *EJ*, September 9, 1986: B3). In the IWA's view, Zeidler's strategy was patterned after Gainer's, it was an attempt to "pull a Peter Pocklington" (Ibid). On September 10, shortly after the talks collapsed, the Minister of Labour appointed a DIB. The DIB recommendations were released October 1st and were rejected by the company the following day, a move that was interpreted by the union as an indication that Zeidler was uninterested in a settlement. "They have scabs in their plant", Local President, Mike Pisak argued, "and...they feel they can operate that way" (*EJ*, October 3, 1986: G7). Negotiations recommenced in October, but broke off following the company's offer of a two dollar an hour wage roll back, a move that reportedly left the parties "farther apart than ever" (*EJ*, November 13, 1986: B12). Relations deteriorated further in mid-November when the company fired 23 strikers convicted of mischief, action that raised fears the dispute would turn violent.

[16]. The Official Opposition also contended that it was dereliction of Ministerial duty for Reid to go abroad while strikes, including the dispute at Gainers, remained unsettled (*EJ*, August 28, 1986: B1). The New Democrats insisted that the Minister was obliged to intervene personally to mediate a settlement at Gainers (*AH*, August 27, 1986: 1335).

Despite the overwhelming negative response to announcements of the LLRC's travel arrangements, the government remained unapologetic about the Committee's overseas itinerary. The government claimed that its intent was not to "spend money unnecessarily" and that travel abroad would ensure that the review was conducted "thoroughly" and fairly (*EJ*, August 26, 1986: 1314; *AH*, September 3, 1986: 1418). Reid also argued that his review would help to reduce the "confrontatory (*sic*) nature of labour legislation". Despite the public outcry the government did not cancel the LLRC's plans to study labour legislation overseas. On September 21, 1986, members of the Review Committee embarked on the first leg of their overseas review, which took them to West Germany, the United Kingdom and the United States (Washington, D.C.). The panel returned to Alberta on October 7 and on October 18 the Committee departed for a 17-day visit to Japan, New Zealand and Australia.

3. The Mariposa Case and More Flaws for the Flawed Law Narrative

There were a number of labour relations developments. On August 1st 2,200 ALCB (Alberta Liquor Control Board) employees represented by the Alberta Union of Public Employees (AUPE) began a strike that would last almost two months. The union was demanding protection for full-time jobs, layoffs on the basis of seniority and wage increases of eight percent in each of the following two years (*EJ*, August 6, 1986: B1). The strike did not appear to have the same kind of support as those at Gainers, Zeidlers and Suncor. Many provincial liquor stores remained open from the outset, run by supervisory staff and union workers who had crossed picket lines (*EJ*, August 3, 1986; A1). In contrast to Gainers, ALCB picket lines were for the most part peaceful. On August 19th Court of Queen's Bench Justice J.B. Feehan rejected an application by the ALCB to restrict the number of pickets to two per outlet and two per warehouse. Instead nine strikers were banned from the picket lines, including AUPE President, John Booth (*EJ*, August 20, 1986: B1). Strikers made front-page news on September 15, however, as two bus-loads of strikers "stormed the legislature" demanding a meeting with the Premier. Ken Rostad, the Minister responsible for the ALCB told striking workers that he would direct the Board to re-open negotiations (*EJ*, September 16, 1986: A1). Talks commenced and a tentative agreement was ratified by the membership on September 26.

Attempts by the UFCW to organize employees of a women's fashions outlet were used by labour to refocus attention on the *Labour Relations Act*.

On August 14 Mariposa Stores Ltd.[17] dismissed 28 employees at one of its four clothing outlets in West Edmonton Mall. The firings came shortly after a number of employees at the outlet had met with UFCW representatives and had made application for union membership. Following the dismissals the UFCW (under section 137 3(a)(i)[18] of the LRA) filed a complaint against the company alleging that the employer's actions were illegal. According to the UFCW the dismissals had followed the company's knowledge that half the staff of store number 58 had purchased union cards (*EJ*, September 16, 1986; B1: October 1, 1986; E15). Mariposa contested this view. Phil Ponting, counsel for Mariposa, argued that employees were not terminated because of the organizing drive, but as a result of the "overall performance of the store which was inadequate" (*EJ*, September 16, 1986; B1). Mariposa explained that it "didn't really want" to fire the entire staff, but had done so because it was unable to "pinpoint" those employees responsible (*EJ*, October 1, 1986; E15). On October 2 the Board ruled that the firings were in contravention of the *LRA*[19]. The Board indicated that:

> The magnitude of the actions of the Company...and the manner of the terminations all bring to question the credibility of the offered reasons for the terminations. The Board found it significant that these termination which,...were unreasonable and unduly harsh, all took place four days after the first organizing Union meeting of the staff of Store No. 58 (ALRB, File L.R. 1026-M-15: p. 15).

As a remedy the union requested that the Board certify the union, a course of action which was permissible under s. 142(5)(c)(i) of the *LRA*. The Board considered the request, but concluded that such action was unnecessarily punitive and was therefore incompatible with its mandate to rectify rather than to punish violations of the *Act*. Instead at the Board's request, the parties agreed that the dismissed workers would be reinstated with full back pay. The Board also ordered Mariposa to mail copies of the Board's decision and a letter drafted by the Board to each of its 152 employees in the Edmonton area (*EJ*, October 1, 1986: B1).

Labour cited the ALRB's application of the *LRA* in the Mariposa case as further evidence that Alberta labour law was flawed and in need of reform. Labour drew attention to employer unfair labour practice (ULP) provisions and the Alberta Labour Relations Board's (ALRB) ability to combat employer interference in organizing campaigns. Labour maintained that dismissals had been recognized by other labour boards to have a "chilling" effect on union organizing drives and that in the case of Mariposa the ALRB had not taken sufficient steps to correct such effects (AFL, 1986: 38). Such a failure was presented as a serious threat to the right of workers' to "freely decide" to join unions[20] (AFL, 1986: 39).

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[17] The Company ran 15 stores in the Edmonton area operating under a number of names: Mariposa, Savannnah; Boppers; and Pineapple (ALRB, File no. L.R. 1026-M-15).

[18] This prohibited employers from refusing to "continue to employ" someone who "is a member of a trade union or an applicant for membership in a trade union".

[19] The ALRB ruled that the employer had violated s. 137(3)(a)(i) and s.137(3)(a)(vii).

D. Narrative and the LLRC's *Interim Report*

1. An Outline of the Report

On November 18, 1986 the LLRC released a 33-page *Interim Report* on its overseas "fact finding mission" in preparation for a series of hearings to be held across Alberta that were scheduled to begin November, 28 (Alberta, 1986b). The bulk of the document presented short 3-5 page summaries of industrial relations in each of the six foreign jurisdictions visited by the LLRC. The Committee wrote about work councils and co-determination in Germany, the voluntarist system in the United Kingdom, and commonalities in the US and Canadian frameworks. The *Report* also described Japan's commitment to joint consultation (e.g., through quality circles and Round Table Conferences) and to "productivity enhancement", through such organizations as the Japan Productivity Centre. The LLRC also outlined the role of commissions in Australia and union registration and conciliation in New Zealand. The text included no analysis or recommendations for change, but concluded with, what Reid described as, "provocative questions about Alberta's system" to which Albertans were urged to respond (Alberta, 1986b). The Committee indicated that responses from Albertans would be used as a basis for recommendations which would be issued in the Committee's final report, to be released at the end of January, 1987 (Alberta, 1986b; 1). Reid indicated that recommendations had been deliberately excluded from the *Report* so that Albertans would have an opportunity to freely debate labour law[21] (*EJ*, November 19, 1986: A4).

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[20] Werlin maintained that where "superior" legislation was in place, unfair labour practices (ULP) of the type that had been committed at Mariposa would have resulted in automatic certification of the union (*EJ*, November 15, 1986: H7). Directed certification, however, was within the authority of the Board, though rarely used.

[21] Critics claimed that, owing to the omission of recommendations, the *Interim Report* read like a "travel brochure" and was "superficial" (Bettie Hewes (Liberal), *EJ*, November 19, 1986: A4; Submission no. 179: 9).

2. Narrative Themes in the *Interim Report*

a. *Economic Themes*

The 'preamble' to the *Interim Report* contained a number of statements closely resembling those that MLA, Fred Stewart (PC) had made in his arguments against the New Democrat's Bill 206. Achieving a system of industrial relations that was compatible with an increasingly competitive economy appeared to be a major concern for the Committee. The *Report* stated:

> We are at the threshold of the twenty-first century. To ensure that our standard of living is maintained we must continue to build on our strengths and marshal our resources to meet the challenges of an increasingly competitive world. We are dependent upon our ability to export; to find and develop new markets. We have a responsibility to ensure that these markets are supplied with goods that are reliable, delivered on time and are competitively priced. We must have an industrial relations system that meets the needs of Albertans and sets the framework in order that our industries can meet the demands of the marketplace, regionally, nationally and internationally (Alberta Labour, 1986a: 1).

The preamble also indicated that the labour relations system also needed to be flexible in "varying economic circumstances" (Ibid).

The *Report* also seemed to be drawing on broader narratives on the nature of labour-management relations in a competitive economic climate. The preamble set out what labour relations *should* be like. It noted that a "prime purpose" of the industrial relations framework was to "enhance" labour-management relations by "encouraging the parties to behave with a commonality of interest". The phrase "commonality of interest", which had been used with some frequency in the *Report*'s summary of Japanese labour relations, also appeared in one of the *Report*'s questions. Question five read:

> Other industrial relations systems have achieved a *commonality of socio-economic interest* of government, union and employer groups through a high degree of respect and communication between and among the three parties.
> Is this lacking in Alberta?
> If so, what can be done to improve it (Alberta Labour, 1986a: 31; emphasis added).

Other questions addressed such issues as "employer-employee equality and respect" (see Figure 5.1).

Questions Posed by the LLRC in its *Interim Report* Figure 5. 1

1. Other industrial relations systems provide for a high degree of recognition of employee-employer equality and respect.

Do we wish to aim for this in Alberta?
If so, how can it be achieved?

2. Other industrial relations systems provide for a high degree of free collective bargaining.
Do we have free collective bargaining in Alberta?
If not, what changes would be necessary to achieve it?

3. Other industrial relations systems permit bargaining to be done collectively and individually.
In Alberta, are the individual's rights to bargain adequately protected?
If not, what should be done?

4. Other industrial relations systems provide for strong communication which are (*sic*) necessary to a good relationship.
Are there restrictions to this process in Alberta?
How can improvements be achieved

5. Other industrial relations systems have achieved a commonality of socio-economic interest of government, union and employer groups through a high degree of respect and communication between and among the three parties.
Is this lacking in Alberta?
If so, what can be done to improve it?

6. Other industrial relations systems provide for a formal mechanism whereby senior representatives from union federations, employer federations and government meet on a monthly basis to deepen their mutual understanding of their respective responsibilities.
In Alberta, do you see a need for a similar forum?
If so, how do you see it constituted?

7. Other industrial relations systems provide for a high degree of multiple level consensus development, involving employees and employers, unions and management.
Do you think that it is valuable to develop mutual understanding throughout an organization?
If so, how do you think this can be achieved?

8. Other industrial relations systems provide for a strong commitment to increasing productivity, and base a significant part of their wage structure on how successfully the enterprise increases it's (sic) productivity.
In Alberta, do you think that productivity should be a central focus of the industrial relations system?
If so, how can this be achieved?

9. Some industrial relations systems legislate the use of compulsory binding third party arbitration in private sector disputes, while others do not.
What should be done in Alberta?

10. None of the foreign jurisdictions have separate industrial relations legislation for the construction industry although its unique nature was universally acknowledged.
Should Alberta introduce a separate statute for the construction industry?

Figure 5.1 continued

11. Other jurisdictions vary in their use of a legalistic approach to industrial relations.
    Is the industrial relations system in Alberta becoming too legalistic?
    If so what can be done?

12. Other jurisdictions strongly emphasize the education of union and management personnel in the workings of the industrial relations system.
    Would increased concentration on this area be beneficial in Alberta?
    If so, how should it be delivered?

13. Other industrial relations systems provide for effective preventative conciliation and mediation services
    Do you think the system in Alberta adequately meets the needs of the labour relations community?
    If not, what would you suggest be done to improve the system?

14. Other industrial relations systems have varying degrees of government involvement in the collective bargaining process
    In Alberta, is the government too involved in the process?
    If so, how can its role be decreased.

b. The Report's Silence on Gainers

Implicit in the *Report* was the idea that any improvement in labour relations would be realized through a shift towards more consensual relations and not by addressing the issues that had been raised in the flawed law narrative. Nowhere in the *Report* was there any mention of Gainers or any of the other summer disputes which had made labour law such a controversial public issue. Traces of the summer's events were barely visible in the document. Alberta's collective bargaining system, it was noted, had had "like all other systems...its successes and failures" (Alberta Labour, 1986a: 1). No details of such failures were provided. Instead the next statement noted that the Alberta system had "functioned through the business cycles of the last decade", suggesting that the system was largely unproblematic. The *Report* also avoided references to those sections of the LRA which had been identified as problematic by labour groups and the Opposition. The *Report* did make a number of references to replacement workers—noting whether they were permissible or prohibited by a certain country—but the issue was not taken up with respect to the recent events in Alberta or addressed in the questions to the public. There was no mention of any of the other issues that had been raised, such as the 25 hour lockout, spin-offs, the security of employee pension plans and unfair labour practices.

The *Interim Report* made clear that events at Gainers were not going to be the focus of the review. This was consistent with previous attempts by the government to address labour law in isolation from the summer's labour strife. In June the government had been drawn into debate on the law and had made efforts to challenge the logic of the flawed law narrative. The strategy had been reactive. In the *Interim Report* it is evident that the LLRC was trying to frame the review initiative on its own terms. Hence the focus on economic concerns, such as competitiveness, and promoting consensual labour relations. Part of the strategy to reorient the review was to present it as a forward-looking, proactive process. The *Report* stated that the law:

> should now be reviewed so that we can look forward to the twenty-first century with stability in labour relations. Recognizing that it has been a number of years since our labour laws have been review, it was decided that a through analysis be undertaken (Alberta Labour, 1986a: 1).

Despite the Committee's suppression of narratives on Gainers which pointed to specific problems in the *LRA*, newspaper reports continued to present the review initiative as a direct response to the summer unrest[22]. The connection was treated as fact. Viewed in this context the Report's omissions (Gainers, etc.) were the unarticulated sub-text of the document.

E. The Significance of a Resolution at Gainers

As long as the strike at Gainers was unresolved there was a chance that the government's efforts to isolate the dispute from the labour review would come undone. Without a resolution to the strike the government's ability to control the direction and focus of the review was in jeopardy. This was brought into focus, following the release of the *Interim Report*, as the LLRC began public meetings at various centres across Alberta[23]. The meetings were emotion filled as workers "poured out their frustrations"[24] (*EJ*, *November* 30, 1986: D5). The flashes of emotion at the hearings were not only an expression of anger over Gainers, but also a reflection of broader concerns especially in the construction sector. Gainers had become a lightning rod for labour's anger; it was an event around which labour had united and rallied for change.

The tone of the hearings was a concern for those who opposed change. In a letter to its members the Alberta Chamber of Commerce indicated that labour had "overwhelmingly dominated the hearing process" and that there was a possibility that "extremely harmful legislative changes" would result (quoted in Noel and Gardner, 1990: 53). There were also suggestions that the government was worried about the rising "hot house temperatures" at the hearings, particularly as the Committee was set to return to Edmonton (December 11) where it was scheduled to hear from the AFL and the UFCW (*EJ*, December 12, A7).

A settlement, or at least efforts to effect an agreement, provided the government with a way to diffuse the growing tension. In early December there were renewed efforts by the government to effect a settlement in the dispute. In the week before the LLRC was set to hold meetings in Edmonton, Premier Getty initiated talks with Pocklington and the UFCW. Formal closed door talks between the parties resumed December 12, the date set for the AFL's presentation to the LLRC. When questions were raised about the coincidence of Getty's intervention with the Edmonton hearings, the labour Minister stated that he had not even considered this. Skeptical of Reid's response, columnist, Linda Goyette wrote that the term coincidence was not a part of the politician's lexicon. The timing of the negotiations between Gainers and the UFCW was seen as strategic.

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[22] On December 5, 1986, editorialist Linda Goyette noted: "The Getty government created the labour law review committee last June to appease Albertans in a season of discontent" (*EJ*: A7). See also *EJ*, November 30, 1986: D5).

[23] Meetings were held in Lethbridge, Medicine Hat, Calgary, Red Deer, Edmonton, Bonnyville, Grande Prairie and Fort McMurray.

[24] One unemployed construction worker even broke into tears relating how he was no longer able to support his family (*EJ*, December 13, 1986: F8).

> If Gainers management and union leaders hadn't been preoccupied with a jousting match [i.e. negotiations] today, they might have pushed past the aluminum turnstiles at the library[25] to speak their minds. The guerrillas just might have brought their miserable little war to the library. Reid would have watched helplessly as his authority disintegrated. Thanks to Getty's divine intervention last week, it won't happen (*EJ*, December 12, A7).

Gainers had the potential to re-ignite debate on labour law and to revive the flawed law narrative which the government had attempted to undermine. Labour had successfully mobilized support for its demands in the context of the dispute, and, if the strike continued to have such an effect, the government ran the risk of being unable to resist the kinds of amendments that the Alberta Chamber of Commerce feared. As Goyette argued, the government "can't afford to debate this controversial legislation with furious Gainers workers yelling on the front veranda[26]—again" (*EJ*, December 12, A7). The government was purported to be so desperate for an amicable settlement at the plant that its "teeth hurt" (Ibid).

> The Gainers dispute haunts the Reid Committee. As long as it festers, the strike provides naked evidence that the current labour stress in Alberta can't be blamed entirely on the recession or that obstinate man with the whiskers [i.e., Pocklington]. It has something to do with shoddy legislation (Ibid).

For the government, much hung in the balance. A resolution of the dispute was critical to the review initiative, the shape of provincial labour legislation and, in light of its faring in the April, 1986 election, possibly its own political success.

Getty's interventions were not without success. During his December 5th meeting with Pocklington, Getty said he believed there was "common ground" between the parties though he conceded Pocklington's chief

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[25]. The hearings were held at Edmonton's Centennial library.

[26]. The "veranda" refers to the steps of the Provincial Legislature.

"difficulty" continued to lie with the hiring back of striking employees. Talks between the union and Gainers resumed on the morning of December 12. Surprisingly, following the first day of negotiations, Pocklington, and Local union President, John Ventura, announced that a tentative four year agreement had been reached. As part of the contract, striking workers would be given priority in hiring. Getty indicated that he had "leaned on" Pocklington[27] to take back striking workers in the belief that they had the "right to go back" (*EJ*, December 13, 1986: A1). Under the agreement the workers also retained existing pension benefits, though the company would be given access to a fund-surplus of approximately six million dollars (*EJ*, December 14, 1986: A1). Pre-strike wages were to be frozen for the first two years, followed by three per cent increases in each of the remaining two years (*EJ*, December 14, 1986: A1). Start rates would increase to $7.50 per hour from $7.00, a rate that was still less than the $8.00 paid to replacements during the strike (*EJ*, December 14, 1986: A2). Reflecting on the more than six month-long strike, many workers expressed disappointment with the agreement[28] prompting speculation that the membership would reject the deal[29]. In a vote held December 14th, however, 846 workers voted 60.8% to approve the contract (*EJ*, December 15, 1986: A1). Union officials and Pocklington both claimed the agreement to be a victory.

F. Submissions to the LLRC

1. About the Submissions

The LLRC encouraged Albertans to give careful consideration to its *Interim Report* and to submit any "comments and suggestions" (Alberta Labour, 1986a: 29). In sum, the Committee received 292 written briefs from a range of constituencies.[30] Individuals submitted 104 briefs accounting for more than a third of the total submissions (35.6%). Private sector employers and employer associations accounted for 72 or about a quarter of the submissions (24.6%). This included large and small business in a range of industries. Construction firms were well represented in the submissions, accounting for 50% (19) of those briefs submitted by employer associations. Public employers (9) and their associations (2) in the health and education sectors accounted for a much smaller proportion of the briefs (3.5%). Local, regional and national unions as well as union federations accounted for one in five briefs (59 or 20.2%). Six submissions came from employee associations. The LLRC also received submissions from municipalities (15 or 5%), political organizations, such as riding associations (10 or 3.4%), charities (3 or 1%) and professional organizations (11 or 3.7%).

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[27] Many of the workers believed that Getty had offered Pocklington financial incentives to settle the dispute (Nikiforuk, 1987). On December 14, 1986 the *Edmonton Journal* reported that Gainers had discussed the prospect of receiving funds through a joint federal-provincial program that was set up to assist expansion in food processing plants (A2). Getty stated that he had not mentioned incentives to Pocklington during his efforts to resolve the dispute.

[28] See *EJ*, December 13, 1986: F8.

[29] Pocklington stated that if the workers rejected the deal he would have continued to employ replacement workers "till hell froze over" (Nikiforuk, 1987: 40).

[30] I obtained these briefs from Alberta Labour in Edmonton. The submissions were organized in a numbered filing system. I have relied on this numbering system in this dissertation to protect the confidentiality of the authors.

Albertans did not restrict their comments to those aspects of the *LRA* that had become the object of public debate during the Gainers dispute. The issues raised in submissions to the LLRC were many and varied, reflecting a diversity of experience and the complexity of the legal framework governing employment relations. The AFL submission, the most detailed brief submitted by a labour group, divided its concerns into "revisions related to recent developments" (i.e., Gainers) and "other problem areas", such as grievance arbitration. Construction unions and contractors identified law-related problems in the construction sector, many of which had been raised several years earlier in the context of economic dislocation. There were also demands for change in other labour statutes, such as the *Employment Standards Act,* which governed non-union employment relations, and the *Public Service Employee Relations Act (PSERA),* which governed relations in the public sector. Public sector unions expressed concern over restrictions placed on strike action and the prescribed system of compulsory arbitration. There was also concern about existing provincial workers' compensation and occupational health and safety regulation. Many of the submissions addressed concerns that had been raised by the LLRC in its *Interim Report* in its strategy to shift the terms of debate. This was particularly true of employer and employer association briefs as well as those submitted by professional groups.

2. Narratives on Rights

a. Fairness and Balance

In the flawed law account of events at Gainers, labour and individuals sympathetic to its views had maintained that picket line violence was the result of labour legislation that was imbalanced and unfair to workers. The AFL explained how labour law had:

> ...contributed to the development of the climate of confrontation and bitterness which has increasingly marked Alberta labour

> relations over the last decade — epitomized by the intolerable situation created at Gainers Ltd. (submission 57: 2).

There were claims from labour and individuals that if the government did not respond to the inequities in the legislation more violence was sure to follow. As one Albertan noted the "moral" of the recent events was that the laws were biased in favour of employers (submission 43). To correct the imbalance the law needed to acknowledge and compensate labour for the inherent advantage that employers enjoyed in the employment relation.

> Collective bargaining law across Canada proceeds from the premise that in modern industrial economies, an individual worker is at a total disadvantage in arriving at an employment contract with the employer. Thus, the reason for union organization — to even the imbalance, albeit only partially (submission 57: 37)

To establish balance the AFL called for the end of practices that allowed employers to hire strike replacements, or "scabs", and the 25 hour lockout. To reflect the "developing labour situation"[31], such as news that Gainers' workers' pension plan had been unilaterally canceled by the employer, labour called for the protection of such plans (submission 57: 2).

Many employers came to the defense of the *LRA*, contending that the law was fair and *not* out of balance. To support this view employers appealed to accounts of the Gainers dispute that had been used previously by members of the Tory government to resist demands for legal change. Employers portrayed Gainers as an exceptional case that in no way reflected the state of Alberta's labour relations framework. Employers claimed that labour had misrepresented the strike and provincial labour law. The strikes, employers maintained, were really "isolated events" which had created "a highly inaccurate impression" of the state of Alberta's labour relations system[32] (submission 182: 1). The *LRA* was not out of balance, but was instead an "effective", "sound" statute that had functioned "very well" (submission 151: 1; submission 169: 15; submission 2: 3). Based on this account employers urged the Committee not to "fix what isn't broken" and not to enact the "radical" changes that had been proposed by labour (e.g., submission 230: 1). Employers claimed that by recommending labour's demands the Committee would be sure to disrupt the "existing balance of power" (submission 182: 1).

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[31] There were also demands that the government formally involve Alberta's two major labour Federations in the review process, a response to the LLRC appointment process.

[32] There were also attempts to restrict blame to parties concerned, such as their "misguided bargaining tactics and negotiating techniques" (submission 248: 3). An association of construction employers wrote:

> so many of the "front page ills" which may have occasioned the review process are the result of the attitudes, the relationship, and the decisions of the participants rather than the basic framework within which those participants function (submission 2: 3-4).

Other attempts to explain Gainers focused on the role of agitators. Outsiders, it was argued, had joined the picket lines and had created trouble. This was an account of the confrontations which the government had used previously to skirt the issue of legal change.

b. Worker Rights

The AFL insisted that "Proper labour legislation should have as its central purpose the protection and promotion of the rights of working people" (submission 57: 6). The right to engage in collective bargaining, it was argued, enabled workers to participate in the setting of their terms and conditions of employment and presented them with a means to overcome inequities in the employment relation. To ensure that collective bargaining was "genuine" (so as to offset employer power), it was essential that certain other rights be protected, among them the worker's right to join or form a union of his/her choosing and the right to strike (submission 166: 2).

Labour and others claimed that the recent developments at Mariposa illustrated the extent to which the right to organize was compromised in Alberta. For labour the dismissal of Mariposa workers underscored the difficulties that unions and workers faced in union organizing efforts. To protect this right the government was urged to consider how employees were economically dependent on their employees and the power imbalance to which this gave rise. It was the AFL's view that:

> To accept the notion that unions and collective bargaining have made workers "too powerful" is to completely ignore the reality of the workplace, the economic dependence of the worker, and the disparities in strength between unions and the employers with whom they deal. In fact the vast majority of collective bargaining relationships are heavily weighted against labour, a fault that must be corrected if the institution is to be promoted (submission 57: 26).

In briefs to the LLRC trade unions argued for changes that they believed would curtail employer interference in union drives and thereby preserve workers' rights to union representation. There was a sense that sanctions against employer interference were inadequate and that ULP provisions needed to be strengthened. To protect this right it was essential that employers adopt a strictly neutral stance during organizing. For labour this meant that employers would have no ability to "consult" with employees about unionisation, no opportunity to delay the process and thereby fewer opportunities to “meddle” in the union’s organizing campaign (submission 57: 42; submission 217). Unions also pressed the Committee to consider adopting certification procedures that were in place in Ontario and Manitoba. This involved moving away from demonstrating 50 percent plus one support to a system in which a certification application could be considered with as little as 30 per cent support (submission 57: 43). Furthermore, where a clear majority (55%+) of employees had provided support for unionization, a bargaining unit would be certified automatically without a vote. Though the *LRA* did not mandate representation votes, the AFL complained that even when majority support had been demonstrated through cards a vote was “almost automatically called”. There were also demands for the Alberta Labour Relations Board (ALRB) to automatically certify a bargaining unit where an employer was found to have committed an unfair labour practice during organizing campaign. Under section 142(5)(c)(i) of the *LRA* the Board was vested with the authority to remedy such practices by certifying a union. As one law firm commented, the provision’s “use and purpose” were not clearly stated (submission 164: 11).

Trade unions also maintained that rights to bargain collectively and to strike were undermined by the employer’s ability to hire a replacement workforce during a strike or lockout. In the submissions Gainers was cited as evidence of what would happen if the government failed to prohibit replacement workers. Without legal change in this area, one union noted, Alberta labour law would retain the “potential” to ferment violent confrontations (submission 35: 2). Prohibiting the use of replacements was presented as a means to remove such incitements to violence and as a way of reducing the length of strikes. Labour urged the Committee to consider the example of Quebec, which in 1977 had taken steps to ban the use of replacement workers. In their submissions many unions demanded that the government take similar action.

By prohibiting replacement labour the government would be able to restore balance to Alberta’s system of collective bargaining. As it stood, the deployment of replacements undermined labour’s right to strike and threatened to “invalidate” the province’s “system of collective bargaining” (submission 57: 29). The AFL claimed that with the assistance of court injunctions, the police, and riot squads, the legality of strike replacements had created a double standard whereby “workers can’t ignore a lockout, but employers can ignore a strike” (AFL, 1986: 29). Workers would receive no employment income, but the employer could maintain operations and turn a profit. Replacements were thought to impair the effectiveness of a strike, as exemplified by the Lakeside Packers dispute. With reference to the Lakeside dispute, a social justice coalition wrote:

> It is a scenario that is repeated over and over again in Alberta, and it will continue...until a balance in the collective bargaining process is restored. If an employer is not given the opportunity to continue making profits while a strike is in progress, that employer would be much more likely to negotiate in good faith. As a result more energy would be put into reaching an agreement and strike activity would be greatly reduced (submission 179, p. 6).

Labour argued that it should have the "same right to end production as their employers" (submission 57: 74). By preventing employers from maintaining operations during a strike-lockout, there was a greater incentive for employers to settle. Banning replacements, labour and others contended, would ensure that the strike was "truly viable" (submission 35: 2).

Unions and employers presented very different accounts of the right to strike. For trade unions resort to economic action (i.e., the strike) provided an incentive for the parties to reach an agreement; it was what made collective bargaining work. The AFL explained that the right to strike was a way to test the resolve of union members against that of the employer but when:

> the employer is allowed to ignore this "contest", and carry on as if it isn't taking place, the whole process breaks down. The employer's incentive to reach an agreement is gone, and there is nothing union members can do. They either accept that their democratic right to organize is an empty one — or, they step outside of the law and force the employer to reach an agreement. This has been the effect of the present labour laws. They have effectively taken away the right to strike, and have promised quick punishment for anyone who insists on exercising it. They have legislated a ban on strikes for thousands of Albertans without providing any alternative: they have thrown up countless obstacles and delays to unions in legal strike position. They have rendered picketing ineffective, and have allowed the hiring of scabs. All this is a carefully-prepared climate dominated by a misconception that strikes are at best, an unnecessary inconvenience, and, at worst, a form of quasi-criminal activity (submission 57: 73).

Based on this understanding of the right to strike, labour called for a number of legal changes including: a ban on replacements; the removal of strike bans on hospital and other Alberta workers; no government supervision of the strike vote; and no statutory restrictions on mid-contract strikes (as in the United States).

Some employers also acknowledged that the strike was an "economic test" (submission 2). Employers, however, also used the term to refer to their ability to check whether the terms of their offer were "market rates", which necessarily involved maintaining operations by hiring replacements. Employers generally did not acknowledge the strike as a right. Some even proposed a number of changes that would restrict such activity. For instance, where an employer and union were unable to come to a settlement, at a certain point the strike simply be declared lost. An association of construction contractors suggested:

> Perhaps after a strike has lasted for one year, if an impasse still exists at the bargaining table, the strike should be declared lost, the replacement employees declared permanent employees, and a government supervised vote conducted among the persons then employed to ascertain whether they wish to be represented by the existing bargaining agent or whether de-certification should occur (submission 2A.: 15).

The assumption underlying this proposal was that labour's ability to strike was not a basic right, but something that could be restricted by statute.

Labour also called for the affirmation of the rights of striking workers. Despite repeated assurances from the Labour Minister that a strike did not sever the employment relation, and that the striking Gainers employees would retain their jobs, unions and other groups urged the Committee to clarify the matter. Some argued that the best way to eliminate confusion was simply to prohibit replacement labour altogether. The AFL recommended that the LLRC consider the full guarantee of reinstatement contained in Manitoba's labour legislation (submission 57: 33). The AFL also urged the Committee not to impose time limits on reinstatement such as the six month limit in Ontario (Ibid). Time limits, however, were supported by employers.

Labour insisted that picketing was a "fundamental right" and was necessary if workers were to prevent employers from undermining the effectiveness of the strike[33] (submission 57: 77; submission 35). Court imposed restrictions on the number of individuals who may join picket lines (as in the Gainers dispute) was presented as a way to "tear the heart of a strike" (submission 57: 77). A public sector union wrote:

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[33] Labour, however, had questioned the legitimacy of legislation which allowed the courts to limit picketing. United Nurses of Alberta (UNA) President, Margaret Ethier claimed that it was unfair that Gainers and other employers across Alberta could obtain injunctions to limit the number of pickets but

> Picketing is a form of expression and as such is a fundamental political right in Canada, closely related to freedom of speech. Yet the courts have made it illegal, for example, in the Gainers dispute, to have more than two to three pickets at a plant entrance. This is a severe and unwarranted intrusion on democratic rights (submission 166: 12).

Section 114(1) of the *Labour Relations Act* limited picketing to "the striking or locked out employees' place of employment." Labour argued that it should have the right to picket other areas, when the employer was continuing operations at another—secondary— location or with the assistance of a business "ally" at some other locale (submission 35: 6). Labour also called for changes that would prevent employers from avoiding their contractual responsibilities by spinning-off non-union companies. There were demands that the "successor rights" clause be strengthened so that a unionized company that created a new company remained subject to the collective agreement (submission 166: 11).[34]

c. *Management Rights*

While labour expressed concern about the right to organize, to picket, to strike and so forth, employer submissions focused on management rights. Employers claimed that they had a "right to continue business" operations during a strike/lockout, and a right to access and egress[35] (submission 151: 4; submission 115: 1). Employers were unanimous in their opposition to legal initiatives that sought to prevent the continuation of operations during a strike/lockout[36]. The ability to hire strike replacements was presented as a management right that, as one construction association contended, was "as basic as...the right to strike" (submission 185: 10-11). Employers maintained that attempts to limit the exercise of this right would not

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labour was unable to seek similar orders to restrict the number of replacement workers that could be deployed by an employer (*EJ*, June 4, 1986, H8).

[34]. Public sector unions also raised the issue of successor rights and restructuring in the public sector (e.g., submission 147).

[35]. Some employers presented the 25 hour lockout as a management right.

[36]. For some employers, however, there was a distinction to be made between replacement workers and "professional strike breakers", or "goons". The use of the former was deemed legitimate, while the latter were not (submission 2a: 14).

eliminate inequities in the balance of power, as labour had argued, but would instead tip the legislative balance too far in labour's favour. Some employers maintained that the ability to recruit non-union workers was offset by the employee's ability to seek alternate employment during the dispute. If the *LRA* was revised to prohibit the deployment of replacements then to ensure balance, employers contended, the government would also be obliged to ban a striker's right to find alternate employment. One measure was presented as the necessary "corollary" of the other (submission 115: 1). Restricting the worker's "freedom" to seek alternate employment was seen as "unenforceable" and "impractical" and as a violation of a worker's "individual rights" (submission 151: 4; submission 268)). Employers also contended that picketing activities should not interfere with a business' ability to continue operations or with the employer's rights of access (as had been the case at Gainers). The injunction was presented as a means of protecting these rights and the Committee was urged not to recommend changes that would restrict an employer's ability to seek injunctive relief. The right to picket, one construction employer association noted, was not "a right to harm another person or his property" (submission 58b: 11).

With respect to their own role in union organizing campaigns some employers claimed that they had a right to communicate their views to employees (e.g., submission 169; submission 185). This was not seen as an abuse of power but as a means to improve communication (see submission 156: 11). While labour highlighted inequities in the employment relation that were seen to handicap employees' ability to organize, employers expressed concern about abuses of union power on employee choice during union organizing campaigns. There was concern that the employees would be subject to union pressure and intimidation and that they would be unable to express their real opinion about union representation. The practice of signing union cards as evidence of union support was seen to exacerbate this problem. Employers made a case that for the system to be fair the Board should conduct mandatory secret ballot representation votes[37]. A professional association made the argument thus:

> At present, employees who sign a membership card and pay $2 are "deemed" to have voted for the trade union to act on their behalf. In the interest of fairness and as an expression of the democratic process, when a trade union applies for certification,

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[37] There were concerns from the construction sector that union action was often in violation of the individual's rights of association. Employers called for the prohibition of "hot cargo", union affiliation and similar clauses, maintaining that provisions which enabled employees both to refuse to handle goods not bearing a particular union label and to work with workers who had no union or the "wrong" union affiliation were anti-democratic and discriminatory (submission 2a: 23).

> a government supervised secret ballot should be held...The process will ensure that no coercion, peer pressure, or misrepresentation, will have a bearing on the outcome (submission 119, p 3).

Requiring a representation vote in all cases was seen as a way to protect workers' individual and democratic rights. Labour, however, believed that the vote had only "superficial democratic appeal" (submission 57: 43).

d. The Rule of Law

In their briefs to the LLRC, employers appealed to broader narratives on the rule of law. Employers contended that incidents of violence on picket lines (e.g., at Gainers) were not treated as seriously as those committed under different circumstances, and that there was a different kind of law that operated during labour disputes. Regardless of the level of emotion involved in a labour dispute, employers insisted, individuals on the picket lines were still obliged to respect the law, a view that had been expressed by the Premier during the Gainers strike (submission 58(b)). As one construction contractors' association noted:

> When the rule of law breaks down, civilized society ceases to function. The law, as established by our democratic process, *must* be obeyed (submission 2(a): 17; emphasis in original).

On these grounds employers called for stricter enforcement of court orders.

3. Narratives on the Economy

a. New Economic Realities

The economy was used by both public and private sector employers to oppose the changes that were associated with the flawed law narrative on Gainers.[38] Employers claimed that the "real" problem at Gainers was not

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[38] Employers also drew attention to the way in which the LLRC had begun to steer the Committee away from issues that had been raised by organized labour. While labour complained that the review had become too general in focus—so that specific issues raised by Gainers were not the Committee's focal point—employers applauded the Committee for reorienting the initiative away from the summer's events. An employer in the energy sector noted:

> We recognize and concur with your position that this review must be undertaken and viewed as a progressive, positive process rather than as a reaction to the recent, well publicized incidents on the labour relations scene (submission 151: 1).

Alberta's labour laws but changes in the economy. To make this case employers in the construction sector saw parallels between labour relations in their own industry and recent events in the meat packing sector: the problems were due to shifts in the economy and the failure of organized labour to acknowledge these changes. As Pocklington had been urging his striking employees and the UFCW, employer submissions to the Committee called for labour to acknowledge the "new market realities" and to respond accordingly at the bargaining table (submission 2(a): 6, 8).Unions, it was suggested, though only too willing to reap the benefits of a good economy had refused to reduce their demands during recession. Viewed in this sense labour's demands for amendments to the LRA were presented as a ploy to avoid the material consequences of economic change.

> The current debate about changes in Alberta's labour laws is based on a position of certain interest groups that what is needed is more "protection" for employees. This "protection" translates into a desire to avoid adjustments to major changes in the world around us (submission 17: 4).

Employers saw labour's demands for greater protection as a euphemism for avoiding market forces.

Employers insisted that they needed the opportunity to "test" an employment offer in the market place[39] (submission 2: 10; submission 2(a): 14). An association representing construction firms maintained that:

> ...the strike is an economic test. If, by the collective withdrawal of services of employees, the employer is rendered incapable of maintaining his operations, of employing either his striking employees or others in the labour market, the market will have dictated to that employer that he must either increase his offer, or go out of business.

Focusing on economic concerns was described as a wise move, and one that would render the Committee immune to the "emotion" that accompanied discussions of labour relations (Submission 2). In reorienting the legislative review Dr. Reid was seen to have established a body that would act both reasonably and responsibly.

[39]. Employers also argued that the ability to test the market also justified the 25 hour lockout. Changing economics, employers contended, made it implausible to be "locked into" agreements. Employers claimed that they needed the flexibility to respond adequately to shifts in the market. The employer could invite his employees back under the terms which the employee was deemed "free to resist or reject" (submission 17: 11). The right to terminate collective agreements following a strike/lockout, and the right to unilaterally change the terms of employment, one construction association noted, had played a critical factor in the economic survival of the unionised sector of the construction industry (submission 2a: 8).

> If, on the other hand, and subject to his duty to bargain in good faith, the employer is able to fully man his operations at the terms he has offered, the market will have adjudged his offer to be reasonable and the union must revise its demands or go out of business [i.e., not conclude a contract] (submission 2, p. 9).

Employers contended that by imposing restrictions on their ability to hire strike replacements, they would be unable to conduct such a test.

The inability to test an offer in the market, employers claimed, would have serious economic consequences. Employers cited the provisions of the Quebec *Code* which had banned strike replacements as a case in point. Referring to the restrictive provision, one employer noted that:

> ...that feature of Quebec's labour legislation has precipitated emigration of business from that Province and has posed a significant barrier to the attraction of new business investment (submission 2; 10).

Employers also claimed that the adoption of Quebec-style restrictions would incur significant economic costs in Alberta. Employer submissions to the LLRC warned that if Alberta pursued the same policy as Quebec it would have to contend with a flight of capital and face difficulties attracting new investment. Restrictions on replacements, with the resulting inability of employers to obtain market-sanctioned contracts, would "create a serious imbalance in the labour laws and severely restrict the ability of Alberta business and industry to compete effectively in the free enterprise system" (submission 236: 1).The inability of employers to hire replacements would inhibit business' adjustment capabilities.

b. Narratives on Competitiveness and Flexibility

The economic consequences of legal change were a salient feature of employer submissions. In drafting new legislation, employers strongly urged the Committee to anticipate how its provisions could affect the economy. An HRM consulting firm wrote:

> Labour legislation should recognize the strong business motivation which is an integral feature of labour relations. The labour relations system must complement the business needs of an organization. Legislative initiatives which make "good

> labour relations sense" but which do not make "good business sense will fail .
> [...]
> We submit the challenge facing the Review Committee is not a reassessment of our labour legislation. The challenge is to examine the business needs of organizations in our society today and recommend a legislative framework in our labour laws which promotes the capacity of our economic system to grow and evolve in ever changing circumstances (submission 194: 2-3).

There were repeated expressions of concern that the Committee recommend legal changes that would enable employers to respond to market shifts, such as increased competition. Fair and effective legislation was described as that which would "support not impede change" (submission 146: 3). The changes proposed by labour, however, were judged to be overly restrictive and would, as one Chamber of Commerce noted, make "successful management" more difficult (submission 198: 2). Labour's proposals were expected to impede an employer's ability to adjust to economic change and cause "significant disruption" that threatened the long term viability of the provincial economy (submission 17: 2). Provisions that limited market competitiveness were also expected to precipitate divestment and hinder the province's ability to attract new investment. This prompted claims that legislation that was flexible enough to allow the parties to respond to market changes was in the public interest[40].

The economy also appeared in labour submissions. Labour, however, was unconcerned about competitiveness or "the market." As in its earlier accounts of Gainers, labour reiterated how high unemployment had brought flaws in the LRA into sharper focus. Labour contended that changes in the economy had enabled a few rogue employers to take advantages of the weaknesses in the legislation.

> It is our view that deficiencies in Alberta's Labour Laws have encouraged some employers to use the economic situation as a lever in attempting to force unwarranted concessions on their workers (submission 188: 1).

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[40] According to members of the Canadian Federation of Independent Business (CFIB) Alberta offered the best labour relations climate in Canada (*Financial Post*, December 1, 1986: 21). This was based on a survey of the CFIB's 76,000 members to which 9,908 members responded.

The economy had contributed to events at Gainers, but ultimately, labour and labour supporters were certain that it was the law that had been responsible for the confrontations. Without flaws in the legislation employers would not have the leeway to act as they had. Closing legislative loopholes was seen to constitute the only reasonable course of action. Initiatives such as a ban on replacement workers and the 25-hour lockout, it was argued, would serve to prevent "unscrupulous employers" from using the economic downturn to undermine labour's rights (submission 216: 2).

4. The Role of Government

In response to the LLRC's inquiries as to whether the government was presently "too involved" in collective bargaining, many employers responded "no" claiming that the *status quo* was acceptable (e.g., submission 267). Some of those who did not object to the government's existing level of involvement were also careful to note ways that the government's role could be limited. A prominent Canadian employer association claimed that the government was not too involved in labour relations though there was potential for its role to be reduced and simplified (submission 19). Some urged the government to adopt a more neutral stance or a more restricted role in collective bargaining. Some even suggested that government should not be a "major player" in labour relations (submission 198: 2). There was also a view that a limited role for government and greater reliance on voluntarism would promote employment flexibility and competitiveness. A private sector employer association wrote that:

> ...the challenge of change must be met by giving employers and employees the ability to respond quickly and positively to changes in the market. It is government's role to provide the framework that allows participants to find solutions to their differences with a minimum of interference by third parties (submission 146: 3).

Some employers also insisted that the government should guarantee management rights, such as its ability to maintain operations during lockouts (i.e., by retaining its ability to hire replacement workers). Some also appealed to narratives that highlighted the public dimension of labour relations. Employers, for example, urged the government to retain the existing picketing provisions on the grounds that they served the public good (submission 146).

Unions also expressed concern about the role of government and that of other third parties in collective bargaining, though their focus was on different "problems". A particular concern for labour was the involvement of the judiciary which was believed to engender a “pro-management bias” (submission 57: 59). On these grounds labour called for significant reduction in judicial involvement. The AFL, for example, recommended that judicial review of Board decisions be restricted to those instances where there were concerns of "fundamental constitutional significance".[41] Furthermore, labour believed that picketing was a matter best handled by the ALRB, and not the courts since the latter did not possess the requisite labour relations expertise (e.g., submission 183: 5-6). Some unions also argued that the government should not be involved in regulating strike votes. The *LRA* limited the number of strike votes to one per dispute and stated that the vote was effective for one year from the date of the vote. The parties were also required to provide 72 hours notice of a strike or lockout. Labour claimed that these procedural rules interfered with union timing and matters that were the "exclusive business of members of the bargaining unit" (submission 57: 76; submission 244). The imposition of such rules, labour insisted, reflected the government's view that unions were "not to be trusted" (bid).

Public sector unions were especially concerned with what they saw as excessive government intervention in collective bargaining. Workers covered by the *Public Service Employee Relations Act* as well as hospital employees and firefighters (who were covered by the *LRA*) were not permitted to strike. Instead outstanding disputes were to be settled by compulsory arbitration. To ensure that "wages and benefits are fair and reasonable...and in the best interest of the public" arbitrators were required to consider the "fiscal policies" of the government before issuing their awards (*LRA*, s.117.8). Labour contended that this measure gave the government "far too much control" (submission 47: 5). Some unions demanded that such restrictions be removed (submission 47), while others called for the restoration of the right to strike (submission 244).

5. The Legitimacy of Trade Unions and Collective Bargaining

a. Affirming Collective Bargaining

Labour called on the Review Committee to include in Albert labour law a number of “positive” statements on collective bargaining not unlike those contained in the preambles to the federal *Canada Labour Code*. The federal *Code*, for example, spoke of the “long tradition” of Canadian labour policy promoting the “common well-being through the *encouragement* of free collective bargaining", a statement which resonated with labour's view of collective bargaining. The AFL believed that by constraining the interpretation of the law in a way that was favourable to workers, a preamble would be an important "weapon" that could be used against employers pursuing anti-labour interpretations of the *Act* (submission 57: 22).[42] Some employers made clear their anti-union sentiments to the LLRC. One employer noted that unions were not legitimate entities because they operated as "monopolies" and "price fixers" (submission 262: 1). An individual noted that legislation had afforded unions too much power. Unions were purported to have "the legal right to do everything possible to destroy...business" and were capable of "crippl[ing] the economy" (submission 16: 2).

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[41]. This provision was contained in British Columbia's *Labour Code*.

b. Union Recognition

In their submissions to the LLRC trade unions maintained that the law could do more to facilitate union recognition. They explained (referring to events at Mariposa) the resistance that unions still faced in obtaining recognition. A number of unions focused on the difficulties that newly certified bargaining units often encountered in obtaining a first collective agreement. Referring to a number of prominent strikes the AFL noted that:

> Even when a group of employees is successful in achieving certification, there is little in the Act to protect them from the anti-union employer who is simply determined that collective bargaining will not work. Many Albertans still remember the strike at the Parkland nursing Home in Edmonton in 1977, the 1983 strike at Eaton's Centre in Toronto, or the recent strikes at the Visa Centre of the Canadian Imperial Bank of Commerce. [...] Most of the bitterness in these disputes did not concern money; they occurred (*sic*) over such matters as *union recognition...*(submission 57: 49; my emphasis).

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[42] A national public sector union, for example, proposed the following:

Whereas it is in the public interest of the Province of Alberta to further harmonious relations between employers and employees by encouraging the practice and procedure of free collective bargaining between employers and unions as freely designated representatives of employees (submission 244: 2).

A pro-labour law firm recommended five statements focusing on workers' rights, such as the right of every employee to belong to a union of his/her choice. It also stated that the "right to be represented by a bargaining agent freely chosen is fundamental to collective bargaining between employers and employees" (submission 164: 6).

The ability of employers to obstruct collective bargaining meant that there was need for legislation that would force a first agreement on the parties in cases they where they were unable to settle matters on their own. Unions also called for the compulsory dues check-off.

c. *Anti-unionism: the 25 hour lockout and Spin-offs*

Unions and those sympathetic to labour's view point identified the 25 hour lockout as an anti-union practice. The AFL maintained that the practice was "one of the most direct attacks to be launched against labour" and suggested that it signaled a "return to the pre-1940 norm of direct...violent confrontations every time an agreement expires (submission 57: 27). Labour claimed that workers' collective bargaining rights should not be at risk during collective bargaining. The 25-hour lockout was also believed to afford employers an "indisputable advantage" for which there was no "corresponding or equivalent [union] power" and had made a "mockery" of the duty to bargain in good faith (submission 175: 10).[43]

To restore the integrity of collective bargaining, labour and individual workers recommended that the government introduce legislation that would end the practice. Labour pointed to labour law developments in other Canadian jurisdictions to argue its position, suggesting that Alberta had taken a wrong turn. Case law in the federal jurisdiction[44] and a recent British Columbia Court of Appeal (Paccar) decision[45] was cited in support of the view that "no contract can be altered unilaterally" (submission 57: 27). While most submissions simply called for an end to the practice some contained specific proposals for change. The AFL recommended that parties be permitted to negotiate bridging agreements that continued the terms of a recently expired agreement until a new contract was adopted. It also called for a provision which explicitly stated that the terms of a contract could not be terminated through the strike/lockout and that it could only be ended by a settlement with the union (submission 57: 28).

Employers and employer associations in the construction sector defended their ability to terminate collective agreements. Employers contended that the *LRA* was built around the idea that collective agreements should be periodically renegotiated, and that contracts should not be perpetual,[46] that is ended when new agreements become effective. Unions, it was argued, though willing to accept contract termination through a strike so as to acquire new terms that reflected a healthy economy, were unwilling to concede that "termination is 'a two way street'" (submission, 2a: 18).

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[43]. Under Section 139 of the *LRA* the parties were obliged to (a) enter into collective bargaining in good faith and (b) to "make every reasonable effort to enter into a collective agreement". Though there was no explicit clause stating that the parties "shall" reach an agreement, but the assumption of *Wagner*-based legislation was that the parties would negotiate an agreement.

[44]. McGavin Toastmaster Ltd. v. Ainscough, S.C.C., 1976.

[45]. Paccar v. CAIMAW, B.C. Court of Appeal, October 2, 1986. See Carrothers (1990) for more details on litigation involving Paccar.

In addition to reviving debate on the 25 hour lockout, labour also used the 1986 labour review initiative to refocus debate on the issue of spin-offs. The AFL wrote that the practice was an "anti-union tactic" designed so that employers could circumvent their contractual obligations (submission 57: 34). In the Federation's view, resort to spin-offs meant that employers had "no regard for the policy of collective bargaining" (Ibid). Other unions noted how the practice enabled "employers to escape their collective bargaining obligations as envisaged by the legislation" (submission 183: 5). For labour the government was obliged to close loopholes in the legislation by making clear that spin-offs were not permissible. Construction employers took a very different view, arguing that prohibiting spin-offs would create imbalance in the legislation.

G. The Final Report

1. An Overview of the Report

Some weeks after the conclusion of the highly charged LLRC Alberta hearings, the Committee released its *Final Report*. The document, released on February 17, 1987, was comprised of a number of sections. The largest section, by far, provided a history of Alberta labour legislation. This was followed by two sections that summarized the input that the Committee had received via public hearings and written submissions: the first covered responses to the 14 questions that had been posed by the Committee in its *Interim Report;* and the second identified the "overall patterns" in the responses. Though described as an analysis, the material presented in these sections was more a summary of views. The Report detailed how views differed on a particular issue, and highlighted where there was consensus. The *Report* did outline responses to a number of controversial issues—such as replacement labour, spin-offs and the 25 hour lockout—but no attempt was made to analyze these arguments or positions. These summaries were also stripped of any references to Gainers or the summer's unrest, even though these had been salient features of the submissions. In the final section of the document, the Committee presented its conclusions along with 57 recommendations for change.

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[46] Some suggested that there was a misperception that agreements were terminated through "trickery" when many of them ended according to their negotiated terms; and that "others ended when a lockout began, just as they would have it (*sic*) a strike began" (submission 17: 11).

In the section that follows I examine how the LLRC responded to the ideas and demands that were set out in the written submissions. I focus on those issues that were successful: those that were acknowledged as significant by the LLRC and requiring change. I approach the recommendations for change with a view to the narratives which shaped demands for legal change (or for no change in some cases).

2. Narratives on Rights

Replacement labour had been the object of competing narrative accounts on Gainers and had been taken up in submissions in relation to Gainers and the broader issue of rights. Employers had argued against their prohibition on the grounds that they would interfere with management rights: to continue business operations during a labour dispute. Labour had insisted that a ban on replacements would lend integrity to the right to strike. The Committee[47] "rejected the suggestion that replacement workers be prohibited" though it did call for a ban on "professional strike-breakers" (Alberta Labour, 1987a: 98, 99). By refusing to impose a general ban, employers retained what they saw as their right to continue business operations during a strike. In response to concerns about the employment status of striking workers (brought into focus by Gainers), the Committee indicated that the law made clear that striking workers continued to be employees[48]. The Committee also recommended that replacements be hired on a temporary basis only. In order to make the right to collective bargaining meaningful trade unions had made a case for an end to replacement labour and the 25 hour lockout. Though limited steps had been taken towards restricting the former, the Committee did not recommend that the latter be banned. Instead it suggested that the 25 hour lockout was "a perceived concept that had no basis in legislation" (Alberta Labour, 1987a: 101). The Committee also noted that other recommendations, such as those pertaining to collective bargaining procedures[49], would "negate the use of this type of drastic measure by either party..." (Ibid).

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[47] In its summary of the briefs the Committee noted that replacement workers had been "consistently identified as a major concern" (Alberta Labour, 1987a: 86). It noted that a ban on replacements had been supported by a significant number of labour groups and private citizens, and that employers and employer associations opposed restrictions, insisting on their "right to hire replacement workers to maintain their operations" (Alberta Labour, 1987a: 84).

[48] With respect to the striking workers' employment status the LLRC maintained, as the Minister had done earlier, that existing provisions—Section 1 (2) and Section 137(3)(a) (vi) and (vii)—"clearly state[d]" that a striking employee retained his employment status (Alberta Labour: 1987, 98). There was, however, suggestion that these clauses be "combined into a definitive statement and highlighted" in a separate section of the legislation (Ibid). The Committee also recommended that where an employer had been found to have negotiated in "bad faith", replacements were to be remunerated at levels set out in the last collective agreement. Payment of union rates has been interpreted as a punitive measure as it was assumed that employers would pay replacements less than that set out in the recently expired contract (Fisher and Robb, 1988).

Trade unions had called for a number of changes in the area of certification on the grounds that they would protect labour's right to organize. The *Report* contained no mention of labour's contention that workers were vulnerable to employer influence during union organizing, nor any mention of developments in the Mariposa case. The Committee recommended a reduction in the minimum threshold of support – from 50% +1 to 40%–that a union would need to support an application for certification.[50] Labour had called for such a reduction because of the difficulties that unions faced in union campaigns. The union had also called for automatic certification where a union had provided evidence of majority support through signed cards. The LLRC also appeared to recommend that the Board supervise a mandatory representation vote. Mandatory representation votes had been proposed by employer's as a means to promote democracy.

Picketing was seen as a democratic right by labour (submission 57: 77). Labour urged the Committee to recommend a number of changes including the relaxation of restrictions on secondary picketing. The Committee noted that the purpose of picketing was to disseminate information about the dispute and to "peacefully" (an indirect reference to the summer's labour unrest) attempt to dissuade individuals from entering the workplace (1987: 99). The LLRC did not recommend lifting the ban on secondary picketing. The Committee did however call for changes that appeared to limit picketing to union members.[51] Such a response seemed consistent with the view that the confrontations at Gainers were the result of "outsiders" who had joined strikers on the picket lines, a view that had been offered by members of the government.

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[49] The Committee did recommend that "If a collective agreement does not include a bridging clause, it would be deemed to include bridging to the commencement of a strike or lockout" (Alberta Labour, 1987a: 96). Labour had asked for bridging clauses that were effective until a new contract took effect.

[50] In an effort to "balance" these certification provisions, the Committee also called for a minimum of 40 per cent to support applications for certificate revocation.

[51] Section 114(1) of the *LRA* read:

> When there is a strike or lockout that is permitted under this Act, a trade union, members of which are on strike or locked out, *and anyone authorized by the trade union* may, at the striking or locked out employees' place of employment and without acts that are otherwise unlawful, persuade or endeavour to persuade anyone not to
> (a) enter the employer's place of business, operation or employment,
> (b) deal in or handle the products of the employer, or
> (c) do business with the employer (emphasis added).

The Committee recommended that the clause "and anyone authorized by the trade union" be dropped from this section of the *Act*.

3. Economic Themes

Narrative links between labour law and the economy were a common feature of employer submissions. Employers claimed that restrictions on replacement labour and the 25 hour lockout would have deleterious economic consequences. Consistent with employer demands, no general bans on these practices were recommended by the Committee. Like the government and earlier LLRC documentation, employers also identified the competitive environment in which Alberta business operated as an important concern. This concern was reflected in the Committee's recommendations that a new Labour Code include a preamble recognising that "labour relations functions in a competitive market economy" (Alberta Labour, 1987a: 90). The LLRC also recommended that the preamble contain statements supportive of "open communications" and "a commonality of interest" between the parties. These had been formally introduced into debate by the LLRC in its *Interim Report* and were seen as a better way of structuring labour-management relations in the context of increased competitiveness. This concern also extended to recommendations that involved improving 'Communications' and 'Education' and establishing an 'Information Base'. In remarks on 'Communications' the Committee noted:

> ...Japan and West Germany...have demonstrated clearly to their citizens, and to the fiercely competitive international marketplace, that a positive labour climate is fundamental to a successful society, and within that society the competitive enterprises that employ millions of workers...Throughout the systems of Japan and West Germany strong lines of communication, which foster respect and create a commonality of interest through consensus building, are clearly evident and should be adapted to the Alberta environment (Alberta Labour, 1987a: 91).

The Committee went on to recommend a number of changes including the posting of an "employee information bulletin" issued by the Department of Labour, a "multi-sector organization" based on the Japanese Productivity Center and a forum modeled after the Japanese Round Table Conference. These and other initiatives were expected to promote stable labour relations and mutual respect between the parties.

4. Government Intervention

In its *Final Report*, the LLRC indicated that Albertans "support[ed] the principle that...government involvement in the employee-employer relationship must be minimized" (Alberta Labour, 1987a: 85). Despite this acknowledgment the Committee issued a series of recommendations that appeared to increase government involvement in collective bargaining. This was most evident in the recommendations on collective bargaining. Mediation would be available to the parties, but where an agreement had not been obtained within 60 days of bargaining, conciliation could be requested by either party or ordered by the Minister of Labour. The Committee called for a two-stage conciliation process. First a single conciliation officer would be appointed followed by a conciliation Board (if this had been the recommendation of the officer). The Committee also recommended a mandatory 14 day "cooling off" period. The Committee also called for changes in the rules governing strike votes, though not the changes that labour had envisaged. The ballot result would be effective for 90 days (rather than a year under the *LRA*) at which time the parties could request another vote. If adopted this would mean that the parties would no longer be limited to a single vote per dispute.

The LLRC contained a number of recommendations strengthening the role of the ALRB in labour relations, a demand that had been issued by organized labour. The LLRC recommended that the operation of the Board be "streamlined" as part of an effort to "minimize...ensuing acrimony, bitterness and delays..." (Alberta Labour, 1987a: 105). The Committee suggested that complaints first be addressed in an informal manner by a Board consisting of three members. Appeals could be taken up with a 5 or 7 member panel. The Committee also recommended that the Board be vested with the authority to assess the costs of appeal applications deemed to be "frivolous" or "vexatious" (Alberta Labour, 1987a: 106). In response to labour's demands, the Committee also tried to curb the role of the courts in the regulation of picketing. The Committee recommended that the initial determination of "place of employment" [for the purposes of picketing] and the "number of pickets" should be a matter for the Labour Relations Board. If the problem was not settled by the Board, the parties would then be given "full access" to the courts.

5. Union Legitimacy

Unions urged the committee to make a number of changes that would prevent employers from avoiding their bargaining responsibilities. There were demands for the enactment of first contract arbitration that would prevent employers from avoiding bargaining with newly certified bargaining units. There was also concern about practices such as spin-offs and the 25 hour lockout which enabled employers to operate on a non-union basis. There were also calls for the government to affirm its commitment to collective bargaining in a preamble.

Labour's demands for changes affirming collective bargaining were not successful. Labour had suggested a preamble to affirm collective bargaining. Though the Committee recommended a preamble, it did not contain the kind of "positive" statements that the AFL and others had suggested. The Committee did not recommend the compulsory dues check-off to facilitate union recognition or first contract arbitration as a means to encourage collective bargaining. Nor did it recommend an end to the 25 hour lockout. Instead the Committee pointed to other changes that it believed would prevent the parties from resorting to the strike/lockout in the first place. A similar approach was taken with respect to spin-offs. The main problem was not Alberta's spin-off legislation, since this was "not significantly different from that which is in place in other jurisdictions throughout Canada". Instead the problem was downsizing in the construction industry. On these grounds the Committee offered no recommendations, noting instead that it was "optimistic" that other changes in the Report would "create an atmosphere for constructive labour relations in the future" (1987a: 102).

H. Bill 60: The Labour Code

Several weeks after the release of the LLRC's *Final Report* the government made known its plans concerning labour law in the March 5th Throne Speech. In a dedicated section devoted to "Labour" the government indicated that it would introduce new legislation that would place the province at "the forefront of labour legislation" in Canada. The Speech also contained the language and themes that the government and the LLRC had adopted to frame the review initiative.

> The code will serve as the basis for a fair and equitable relationship between all employees and their employers, recognizing their *commonality of interest*. It will also provide the framework for the stable labour relations climate essential *to encourage the investments for the diversification and continued growth of the Alberta economy into the 21st century* (*AH*, March 5, 1987: 3; emphasis added).

Several months later on June 17, 1987 the Tories tabled Bill 60: the *Labour Code*. In the next section I review the changes that were proposed in the legislation.

1. Rights

Rights were taken up in Bill 60 in a number of ways. In the wake of the Gainers dispute labour had argued that a ban on replacement labour would preserve collective bargaining rights and the right to strike. Bill 60 contained a number of changes concerning replacements. There were restrictions on professional strikebreakers[52] (s. 262(3)(h)), as recommended by the LLRC, but employers remained free to hire replacements, a practice to which they believed they were entitled. The Bill also contained provisions concerning the employment status of striking workers, which had also emerged as an issue in the context of Gainers. Bill 60 also made provision for the reinstatement of striking or locked out employees, though not in the way that labour groups had requested. Section 202 of the Bill stated that a worker did not cease to be an employee "by reason only of his ceasing to work as a result of a lockout or a lawful strike." Bill 60 specified the conditions under which this employment relation continued. Section 203 (1) stated that when a strike/lockout was at an end a striking employee was entitled, on his/her own request, to resume employment "in preference" to workers hired as strike replacements. This placed the onus on the individual worker to seek re-employment. Since the law also limited the duration of strikes/lockouts to two years, employee claims to employment were also time-limited.[53]

Bill 60 did not prohibit the 25 hour lockout, which labour had also presented as a threat to its rights to collective bargaining and to strike. The closest that the legislation came to addressing labour's concerns was contained in s. 242(1) which specified that where the parties had commenced bargaining the existing agreement would remain effective until a strike or lockout.[54]

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[52] The Bill defined "professional strike breaker" as:

> a person who is not involved in a dispute and whose primary object, in the Board's opinion, is to prevent, interfere with or break up lawful activities in respect of a strike or lockout (s. 262(5)(a).

[53] A strike was deemed to be at an end following either a settlement, the termination of one of the parties bargaining rights or after two years had elapsed since the beginning of the strike/lockout. The two year limit was a new restriction on the strike, and seemed to be based on the recommendation made by some employers strikes be time-limited.

[54] Section 242(1) stated that the agreement would remain in effect until "(a) a new collective agreement is concluded or (b) a strike or lockout commences..."

Bill 60 also proposed a number of changes in the area of certification. Unions had called for a changes in certification as a way to mitigate the difficulties it faced in organizing workers, changes that would affirm the right to organize. The Bill did contain a reduction in the threshold of support (from a majority to 40%[55]) as requested by labour. Bill 60, however, also contained changes that labour believed would compromise its right to organize. Section 145(1)(d) made clear that a ALRB would not issue a certificate until:

> the employees in the unit the Board considers an appropriate unit for collective bargaining have voted, at a representation vote conducted by the Board, to select the union as their bargaining agent...

Mandatory representation votes had been advocated by employers on the grounds that they would protect workers' individual, democratic rights. The Bill also added a statement that affirmed the employer's right to communicate with his employees. The Bill stated that it was *not* an unfair labour practice for an employer to "express[es] his views so long as he does not use coercion, intimidation, threats, promises or undue influence" (s. 262(2)(c)) Citing events at Mariposa, trade unions had argued that there could be no legitimate role for employers in the organizing process as the employer would use his power to turn workers against the union.

Bill 60 also contained changes in rules governing picketing. Labour had identified picketing as critical in its ability to mount a successful strike. The legislation did not remove restrictions on secondary picketing that labour had demanded. Instead, as recommended by the LLRC, the Bill appeared to limit picketing to trade union members only.[56] These changes were not made on the recommendation of labour or employer. Instead they seem to flow from an account of the Gainers dispute that had linked the strike violence to the attendance of outsiders on the picket lines. This view is supported by Fisher and Robb (1988: 302) who contend that the change was based on the "ill-conceived belief that...absent their presence [i.e. outsiders], violence on picket lines will somehow end".

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[55] As recommended by the LLRC (for the purposes of balance) forty per cent support was also required to support an application for certificate revocation.

[56] Picketing was to be limited to members of the trade union which included members of the larger trade union organization (i.e., other locals, branches and sub-divisions) (s. 198(2)).

2. Narratives on the Economy

Bill 60 contain traces of narratives on the economy. In the first statement of the preamble to Bill 60 it is possible to see the influence of narratives on competitiveness. It reads:

> ...it is recognized that a mutually effective relationship between employees and employers is critical to the capacity of Albertans to prosper in the *competitive world wide market* of which Alberta is a part...(emphasis added)

The statement also sets out the importance of "mutually effective" employee-employer relations in Albertans' ability to compete. Additional statements concerning the nature of employment relations were set out in the third statement. As recommended by the LLRC the legislation privileged the concept of a commonality of interest between the parties.

> ...the employee-employer relationship is based on *a common interest in the success of the employing organization*, best recognized through open and honest communication...(emphasis added).

Such a view, however, is at variance with provisions in the legal text[57] that are based on the assumption that the parties will pursue their own, separate interests (Fisher & Robb, 1988).

The desire to refashion labour relations so that they were consultative and compatible with a competitive economy is reflected in a new section of the Code entitled "Communication and Education". The Minister of Labour was free to collect and disseminate information, to establish multi-sector advisory councils and to convene a round-table conference:

> consisting of representatives of business, trade unions, the academic community and any other groups he considers advisable for the purpose of developing a general understanding of Alberta's economic circumstances and those factors critical to continued economic growth (s. 8).

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[57] Fisher and Robb (1988: 289) point to a number of such provisions such as the prohibition of employer-dominated trade unions, the exclusion of persons in managerial positions and those with access to confidential labour relations information from bargaining units.

The Bill also contained a series of provisions authorizing the Lieutenant Governor in Council to establish structures and procedures for consultation and communication. These communication and education provisions together with a number of statements in the preamble manifest ideas that the government had used to reorient the labour review.

3. The Role of Government

Bill 60 took up a number of the LLRC's recommendations that appeared to increase government involvement in labour relations. The Bill, however, did not respond precisely as the Committee had recommended. Bill 60 did not call for conciliation *per se*, but rather a two-stage "enhanced mediation" procedure, a variant of mediation and conciliation. If a new collective agreement had not been concluded within 60 days from the day that bargaining proposals were exchanged either of the parties involved could request a mediator (s.178). At such time the Minister could also require the appointment of a mediator. Within 14 days of his/her appointment, the mediator was required to recommend either terms for an agreement, that a mediation Board be appointed, or that he/she intended to provide no recommendations. In the event that the Minister appointed a mediation Board the latter was granted 20 days in which to effect a settlement, upon which time it would issue recommendations. The parties were then allotted ten days within which to accept or reject the Board's recommendations (s. 181(2)). If both parties accepted the report the recommendations would become binding. Where this had not occurred the Board was directed to supervise a vote on the Board's report. The Bill also called for a 14 day "cooling-off" period following the conclusion of these procedures.

Bill 60 also made some attempts to limit the courts' jurisdiction over picketing. Section 204 stated that "No court shall grant any injunction or other process...that has the effect...of restraining or limiting picketing." The Bill, however, set out a number of conditions under which this restriction would not apply, such as in cases where there was a threat to persons or property (s. 204(a)). The Bill also responded to the LLRC's recommendations that the operation of the ALRB be streamlined. Under section 123(9) and (10), the Chairman of the Board was authorized to assign a matter to an informal board consisting of 1 or 3 members. The matter could subsequently be appealed to a five member Board (s. 123(11)).

4. Legitimacy of Trade Unions and Collective Bargaining

In their submissions trade unions had asked for a number of changes that were expected to prevent employers from avoiding collective bargaining. Bill 60, however, made no provision for first contract arbitration. No additional restrictions were proposed in the area of spin-offs. The Bill did, however, state that an agreement was to remain in effect until a new collective agreement was concluded or a strike or lockout had commenced "notwithstanding any termination date in the agreement". This was not quite what labour had had in mind, but it did mean that collective agreements could remain in effect past their date of expiration until the dispute resolution procedures had run their course (s. 242 (1)). Labour had also urged the government to affirm its commitment toward collective bargaining in a preamble. Though a preamble was included in Bill 60, it did not contain the kind of statements that labour had requested. References to collective bargaining were left until the last statement and differed markedly from the tone of the statements that appeared in the *Canada Labour Code*. Collective bargaining was deemed an "appropriate mechanism" to establish terms and conditions of employment; but was not encouraged. It is also significant that the preamble made no explicit reference to trade unions, only to employers and employees. This omission suggests that the government did not see trade unions as an important constituent in employment matters and that it was not keen to promote collective organization.

I. Concluding Remarks

In this chapter I have illustrated how the government and the LLRC began to reframe debate on Alberta's labour law. I began the chapter by examining debate on the New Democrats' Bill 206, legislation that addressed the problems in the *LRA* that had been identified in the flawed law narrative on Gainers. In an effort to discredit Bill 206, the government began to reorient debate away from events at Gainers by drawing on broader narratives on the economy, such as growing competitiveness. Links between the economy and labour law were also made in the LLRC's two *Reports*. The LLRC claimed that the economic changes necessitated reframing labour relations so that management and labour dealt with each other in a consensual and co-operative fashion, rather than adversaries.

Narratives on the economy had a significant influence on the provisions that appeared in Bill 60. In the preamble there are traces of the narrative on competitiveness. There is also clear evidence of the government's efforts to make labour relations more co-operative and therefore better suited to the idea of a competitive economy. Traces of these accounts are evident in Part 1 of the Bill dealing with "Communication and Education". Labour's concerns about imbalance in the *LRA* and the need to adequately protect its rights were not very successful in shaping change. Concerns about rights that had emerged in the context of Gainers were not addressed in the way that labour and its supporters had demanded. Though the Bill called for the prohibition of professional strikebreakers, it provided no general ban on replacement labour. The Bill affirmed the employment status of striking workers (s. 202) but a striking employee was obliged to file a request with his/her employer to resume employment "in preference" to replacement workers (s. 203(1)). Since strikes were limited to two years, the time in which striking employees could file requests to resume their employment was also time limited.

The absence of labour's demands for an end to the replacement labour seemed more in keeping with employer accounts of the LRA. Employers had argued against labour's demands on the grounds that the LRA was already balanced and that the adoption of these demands would tip the balance too far in labour's favour. Employers had also argued that labour's demands would compromise management rights, such as the ability to maintain business operations during a work stoppage. By not banning replacements the government seemed to have accepted employer accounts: that restrictions would disturb the existing legislative balance and threaten management rights. Bill 60 contained none of the changes that labour believed would mitigate anti-union practices by employers and affirm the government's commitment to collective bargaining (e.g., first contract arbitration). The absence of positive statements on collective action and the omission of any reference to trade unions in the preamble is itself suggestive of an anti-unionism.

The contents of Bill 60 suggest that the ability of labour and its supporters to influence the direction of debate on labour law had waned considerably. In the summer of 1986 representations of the LRA as flawed had enjoyed considerable appeal which was in turn critical in the inception of the 1986 labour review initiative. By the middle of 1987, with the dispute at Gainers settled legal change became a much less pressing issue. This also meant that the government was better able to direct the review on its own terms. Hence its success in shaping the terms of the review and the contents of Bill 60. In the next chapter I will examine reactions to Bill 60 and discuss how its provisions were interpreted in narrative accounts.

VI. Interpreting Bill 60

A. Introduction

In chapter four I examined how narratives on the law were taken up in the Committee's *Final Report* and then how these narratives influenced the statements that appeared in Bill 60. In this chapter I am interested in how the changes that were presented in Bill 60 were interpreted. More specifically my objective is to understand *how* specific clauses were identified as problematic. To do this I rely primarily on 315 briefs submitted to the Minister of Labour following the tabling of Bill 60 in the Legislature. Where possible I also draw on representations of Bill 60 that were documented in other texts, such as newspaper reports. As in earlier chapters I present interpretations of the legislation in terms of four narrative themes: rights; the role of government; the economy; and trade union legitimacy. Much of the chapter represents an attempt to reconstruct the narrative logic that shapes reactions to the Bill. I conclude the chapter by presenting the government's reactions to the submissions. In the section that follows I provide some background details on Bill 60.

1. About Bill 60

Bill 60 was comprised of several parts: Part I was new and dealt with matters pertaining to "Communication and Education"; Part II contained employment standard provisions; and Part III set out rules governing trade union-management relations.[1] In the existing legislation employment standards and labour relations were regulated by separate statutes: the *Employment Standards Act* (*ESA*) and the *Labour Relations Act* (*LRA*). Employment standards, which governed the employment contract between employers and individual workers, had remained at the margins of the debate during the legal review. During the LLRC hearings some unions demanded improvements in minimum standard, such as an increase in minimum wage rates. In February, 1987 in its *Final Report*, the LLRC noted that public hearings around the province had revealed that there was a considerable lack of knowledge about the *ESA*, especially concerning the procedures that were in place to resolve disputes between individual workers and their employers (Alberta labour, 1987a: 93). The Committee concluded that a review of the *ESA* was necessary, a task that it delegated to the Department of Labour (Alberta, 1987a: 93-94). The Committee also outlined the issues that it believed consideration (Alberta Labour, 1987a: 94).

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[1] Labour contended that the consolidation of labour legislation governing the individual employment contract; and collective labour relations would only confuse the two legislative regimes (submission 226: 6). Consolidating them would not "streamline" the legislation as there had been no attempts to combine them in any important respects, such as in their administration. The two types of legislation would continue to be administered by two separate Boards: the Employment Standards Board and the Labour Relations Board. (submission 226, 6).

Bill 60 contained a number of revisions in the area of minimum standards. Employers reacted very negatively to the changes, and for the first time during the review the individual employment contract became a focus of debate. Debate also shifted to the issue of individual rights. Employers claimed that the changes were not the rights that individuals could legitimately claim since they infringed upon management rights. Employers also claimed that the changes were unacceptable because they had been introduced without any prior consultation with their representatives. There was a sense that the government had acted independently and inappropriately. Employers also reacted negatively to the way that the government had pursued its own agenda in terms of refashioning labour-management relations.

2. Reactions to Bill 60 and the "Relative Autonomy of the State"

Employers and trade unions objected to the changes proposed in Part 1 of Bill 60 on "Communication and Education" and in Part III on labour relations. The changes in these areas of the legislation reflected the government's attempts to promote a new system of labour-management relations where the parties worked together and recognized their common interests, rather than seeing each other as adversaries. The changes were the culmination of a government agenda that had been constructed in response to narratives on the Gainers strike, especially the view that the strike was the result of problems in the *LRA*. The government resisted engaging in debate on Gainers and instead began to frame the debate in relation to the economy. The LLRC also focused on the economy, especially competitiveness, and the idea that there was a need for a more consensual approach to labour relations, ideas that would have been reinforced by the Committee's visit to Japan. In focusing on these matters, the government had drawn on broader narratives that had connected the economy (i.e., competitiveness and free trade) to labour relations and the general concerns that were being raised about the efficacy of the *Wagner*-based industrial relations system.

In their submissions to the LLRC a number of employers had commended the Committee for shifting debate away from Gainers to less emotionally charged issues such as the economy. In this chapter I will focus on reactions to the way that the government translated its agenda into specific legislative proposals. In other words I will consider responses to what a Marxist would conceive as the policy developments of a relatively autonomous state. I examine how narratives were used by employers and unions to contest the government's efforts to renegotiate labour-management relations in Alberta.

B. About the Submissions on Bill 60

1. A Comparison of submissions to the LLRC and to the Minister on Bill 60[2]

At first reading of Bill 60 Dr. Reid indicated that the legislation would "be sitting over the summer for input" so that Albertans could make known their views on its contents (*AH*, June 17, 1987). Input on the Bill was to be received by the Minister's Office by November 30, 1987 (Alberta Labour, 1987b: 1). Though the Minister was once again soliciting public input the process would not involve public hearings, as had been the case in 1986, but consist of the solicitation of written briefs and private consultations with the Minister. In taking this decision the government had exercised its power to direct the review process. The decision appeared to be a strategic and prudent one. Another set of public hearings could have provided another venue in which critics could air their views. Media coverage of proceedings also ran the risk of reviving public debate on labour law and more embarrassment for the government. By organizing the review in this way, the process could proceed more discreetly away from the scrutiny of the press and the public gaze.

The response to the Minister's request for input on Bill 60 was substantial: 315 briefs were received in total (see Table 6.1). As with submissions to the LLRC, the documents were not made publicly available. Of the 315 briefs received by the Minister's office 44 percent or 138 came from large and small private sector employers. The Minister also heard from 39 employer associations (12 per cent), including various Chambers of Commerce and industry groups, as well as public sector employers and their associations (46 or 15 percent). The majority of public sector briefs (33 or 10.5 percent) were submitted by school boards, prompted in part by a concern that the consolidation of employment standards with labour relations provisions would interfere with the operation of *The School Act*. When combined, public and private sector employers and their associations accounted for 70 percent of the briefs. Total employer submissions had accounted for less than a third (28 percent) of submissions to the LLRC.

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[2] Like the briefs to the LLRC, submissions to the Minister on Bill 60 were made available to me by Alberta Labour. Again, to protect the confidentiality of the authors, I have relied on the existing filing system to reference the briefs.

Only 44 individuals wrote to the Minister to express their views on Bill 60. Individuals had comprised the largest category (104) of respondents to the LLRC, accounting for over one third (36 percent) of the total submissions. Perhaps most surprising of all is the virtual absence of input from employee associations and unions. The views of this constituency had comprised a significant component of the input received by the LLRC (22.2 %). Submissions on Bill 60 were overwhelmingly an expression of employer views. In the next section I try to account for the differences in the two sets of submissions.

Table 6.1 LLRC and Bill 60 Submissions by Author

Author of Submission	Submissions to the LLRC	% of total	Submissions on Bill 60	% of total
Total private sector employers	32	11	138	44
Construction	8		8	
Energy	3		29	
Other	21		131	
Total private sector employer association:	40	14	39	12
Construction	19		7	
Energy	1		5	
Other	20		27	
Total public sector employers:	9	3	40	13
Hospitals	4		9	
School Boards	5		28	
Other	0		3	
Total public sector employer association:	2	0.5	6	2
Hospitals	1		1	
School Boards	1		5	
Other	0		0	
Municipality	15	5	21	7
Government Agency	0	0	2	1
Political Organization	10	3	0	0
Charity	3	1	1	0.3
Professional organization	11	4	10	3
Unions	59	20	4	1
Employee Associations	6	2	3	3
Individuals	104	36	44	14
Anonymous	1	0.3	0	0
Grand Total	292		315	

2. Understanding the Composition of the Submissions

The large response from employers is interesting and warrants further consideration. Evidence from the submissions indicates that the employer response was the result of the actions of several prominent organizations in Alberta—a number of Chambers of Commerce and a well known Edmonton law firm with a history of representing employers and the Alberta government in employment matters. These organizations circulated documents to employers outlining how the proposed legislation would negatively impact their business operations. The circulars also urged employers to make known their concerns about Bill 60 in submissions to the Minister. The documents proved to be very influential, not only in terms of the level of employer response, but also with respect to the contents of the submissions: the provisions that were identified as problematic and so forth. Employers relied heavily on these texts; some noted that they had been unable to examine the bill, but had been made aware of the proposed changes through such circulars. Drawing on the details provided in these documents, many employers related how the Bill would affect their own businesses. Some simply copied the texts verbatim, either in part or sometimes in their entirety. Others appended copies in support of their own submissions. Clearly employers had engaged in a major lobby effort against the changes in Bill 60.

Though these details help account for the large employer response they do not explain the drop in submissions from individual Albertans. A year earlier the Gainers dispute had acted as a catalyst for labour reform when sympathy for striking workers became translated in to support for legal change. Events at Gainers made labour law a high profile issue. As a result mothers, housewives, retirees, as well as union and non-union workers took the time to write to the LLRC. Following the resolution of the Gainers dispute, labour law became a less pressing and volatile public issue. Alberta was not without industrial unrest in 1987 though. Beginning in mid-June, coincident with the introduction of Bill 60, postal workers staged a national rotating strike. In Edmonton tensions ran high and a number of incidents of picket line violence were reported. Despite these developments the postal workers' strike lacked the elements that had stirred such intense public interest in the Gainers dispute and the concomitant demands for labour reform.

Public attention was focused on other crises. In the weeks and months that followed Bill 60's introduction, public attention was drawn to the financial fiasco at the Alberta-based Principal Group.[3] Tragedy of another kind struck when a powerful tornado touched down in the Edmonton area. The Alberta press was also consumed with national developments: progress in the Canada - U.S. free trade negotiations and the attendant debate on the projected impact of such an initiative. In this context public interest in labour law in general and Bill 60 in particular waned.

There is evidence that the paucity of union submissions was also indicative of labour's frustration at the outcome of the government review. In its submission to the LLRC, the AFL had noted that though there were widespread concerns that the hearings were "a sham"[4] it would take the Minister's announcements about the review initiative at "face value" (submission 226: 2). The AFL had also urged its affiliates to do likewise and to respond accordingly. Following the introduction of Bill 60, however, the AFL claimed that it had seen "little evidence" that either the Review Committee, or those responsible for drafting the legislation had:

> paid any attention to our Submission, or to the vast majority of those appearing before the Committee who demanded substantial improvements to the protection of workers' rights in Alberta labour law (submission 226: 3).

Labour saw little in Bill 60 to suggest that the government would take seriously its views.

Labour was also both aware and suspicious of the efforts of the organizations that were orchestrating an employer response to the new Bill (submission 226: 18). The documentation that was being circulated to employers, insisted the AFL, was filled with emotive language and was guaranteed to spark "an alarmist, irrational response from business". The AFL did not recommend a counter offensive against employers as it believed that opposition from both employers and labour would be used strategically by the government.

> It is our concern that this orchestrated critique might be used to "prove" the impartiality of Bill 60 through the spurious, illogical notion that the Bill must be acceptable and fair if both

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[3] In June, 1987 two of Principal's investment firms were ordered into receivership, a move which brought down the entire Principal structure, affecting thousands of investors. In July 1987, the government commissioned an investigation into the collapse that would continue for two years (see Lisac, 1995: 30-32).

[4] There was also a view that decisions about the legislation had already been taken (submission 57 to the LLRC: 2).

> sides object to it. Nothing could be further from the truth (submission 226: 18).

There was no letter writing campaign even though the AFL saw Bill 60 as both anti-worker and anti-union (Ibid). Though there was no co-ordinated effort to respond to Bill 60, the AFL did submit a fairly detailed brief on the legislation. It is upon this document that I rely for labour's assessment of the proposed Bill.

Marxists and pluralists would see the submissions on Bill 60, like those on the *LRA* submitted to the LLRC in 1986, as evidence of lobbying efforts. In submissions to the LLRC labour had lobbied for specific changes to the *LRA*, while employers had urged the government to retain the *status quo* or to undertake minor fine-tuning. Organized labour did not mount a letter writing campaign on Bill 60 as it had on the *LRA* because it believed that its efforts would only be ignored by the government. Labour believed that Bill 60 had not responded to its concerns and that concerted lobbying campaign against the legislation would be used by the government to show that the legislation was balanced. My interest in the lobbying efforts of employers and labour has been how the parties have been able to interpret law in a given discursive context. Earlier in the dissertation I examined how labour and its supporters were able to identify problems in the *LRA* in narrative and how this served as a basis to formulate demands for change. I also looked at the way employers used narrative to defend the law. In this chapter my concern is understanding how employers and labour were they able to interpret changes in Bill 60 and to construct demands for change. In the next section I examine how provisions of the Bill took on meaning in narratives on rights.

C. Narratives on Rights

1. Terms and Conditions Outside of Collective Bargaining

Until the introduction of Bill 60 labour standards had remained at the margins of the debate on the *LRA*. The government had called for a general review of Alberta's labour laws in general. The review initiative, however, had focused on matters pertaining to collective bargaining—evidence of Gainers' lingering effect, as well as labour relations developments in the construction sector. In their submissions employers appealed to narratives on rights to attack the revised provisions that were contained in Part II of Bill 60 which set out minimum employment standards for employment in the non-union sector[5]. Bill 60 introduced a range of changes in such areas as holidays, hours of work (overtime), vacations, employment termination, the powers of employment standards officers and so forth.

Employers claimed that the revisions were not fair because the government had not consulted with them on such matters. Some claimed that they had been caught off guard by the revisions. A prominent Alberta construction association expressed "shock" at the "magnitude of the changes" noting that it was "at a loss to explain or understand the origins" of the revisions (submission 209: 2). Employers accused the government of failing to clearly set out its agenda, something which, as one Chamber of Commerce wrote, had always been made clear in previous labour review initiatives (submission 49). Unaware of the government's intentions with respect to labour standards, employers indicated that they had focused their attention on labour relations . The fact that they had not been afforded an opportunity to express their views on the *Employment Standards Act*, they believed, had serious implications for the validity of the changes in Part II.

> We were led to believe that few amendments would be contemplated in employment standards when if fact many changes have been proposed, and further, in areas where there has been little or no industry consultation. In labour or industrial relations, the principle of equity or even-handedness and fairness has been lost (submission 209: 2).

Employer arguments assumed that legal legitimacy flowed from due process, and from consultations with interested parties. Since changes had been proposed without input from employers, the amendments were deemed to be of questionable validity. Lack of consultation had been used previously by organized labour to support its claim that the LLRC was imbalanced and therefore incapable of providing a balanced review of the *LRA*.

Labour, New Democrats and the press had reacted positively to the new employment standards. In its submission to the Minister, however, the AFL maintained that the employment standards were not "fair". According to the AFL, minimum standards did not constitute fair labour standards. Employment standards needed to be "upgraded" and based on those standards set in collective agreements (submission 226: 16, 19). Unlike employers, labour focused on what had not been omitted from the Bill.

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[5]. These minimums also applied in the unionized sector though there is an assumption that trade unions would negotiate terms and conditions of employment above the minimums.

The AFL complained that there had been no provisions for pay equity or increases in the minimum wage of $3.80 per hour, a rate that had not been changed since 1981 and was the lowest in Canada. For the AFL the minimum wage was a "national disgrace", "an anachronism, and a shameless travesty" (submission 226: 2, 16). In short, labour did not see the new employment standards as having violated its rights, but as not having adequately protected the rights of non-union workers.

2. Individual Rights vs. Management Rights

In response to the proposed revisions to employment standards, employers introduced a distinct narrative on individual rights. Employers claimed that the government had unfairly promoted the rights of individual workers at the expense of management rights. The changes were presented as being far above-minimum standards that would further wrestle away employer control over employment matters. Specifically the changes were expected to encroach upon the right to manage, a right which one submission described as "fundamental to Canadian labour and employment relations" (submission 18a: 2). Speaking to what were referred to as the 'custom and practice' provisions (s.s 4(h)(x) and 10(2)), a prominent national employer council wrote:

> The introduction of these...Sections in Bill 60 significantly raises the floor of Alberta's minimum standards. By including these employer incentives as the new minimum standard, the government has intruded into the market and removed from the control of the employer their ability, on an individual basis, to reward their employees for performance. Staff discounts, seminars, conventions, sales incentives, year end bonuses and staff picnics *are not rights of every employee*. They are *privileges* which are earned and offered in a non-discriminatory way for performance (submission 38(b): 3-4; emphasis added).

Employers maintained that these changes were not minimum standards but were perks that should be doled out to employees at management's discretion. Employees could have no legal claim to these benefits since these were contingent upon job performance and upon management prerogative.

Concerns about the loss of management control were also used by employers to problematise provisions affecting the powers of the

Employment Standards Officer (ESO). The ESO played an important role in handling disputes that arose between an individual employee and his/her employer. Under the Alberta *Employment Standards Act* (*ESA*), the ESO's first obligation was to try to mediate a settlement between the parties. Failing that, the ESO could order an employer to pay wages and entitlements an employee where he/she believed they were due (*ESA*, s. 88-89). Under Bill 60 the officer was also awarded the authority to "direct an employer to reinstate an employee who has been suspended or discharged contrary" to the legislation (s. 93(2)(d)). Employers condemned this change as an "extreme", "dangerous" and "unreasonable" measure (submission 127: 3; submission 49(a): 2; submission 83: 2). A small business owner in Calgary wrote:

> This is an outrageous proposal! This gives the right to determine who works for my organization to a bureaucrat who can only "go by the book" and has no sense of the personal interactions or operational considerations of the company (submission 124: 1).

The Bill was seen to have handed over critical management rights to government officials who were perceived as lacking the requisite management expertise.

3. Collective Labour Relations

Employers, employer associations and organized labour also claimed that the labour relations provisions contained in Part III of Bill 60 were unfair. The AFL claimed that after considerable analysis it had found Bill 60 to be "inappropriate, unworkable and badly flawed" and "heavily weighted against workers" (submission 226: 3, 18). The AFL claimed that the government had failed to respond to any of the legal problems responsible for unrest at Gainers that labour had identified in submissions to the LLRC. The Federation complained that Bill 60 contained no proscription on replacement workers, 25 hour lockouts or spin-offs and once again urged the government to make these revisions.[6] There were also charges that the changes (which I will elaborate later) that had been introduced in Bill 60 would only further undermine labour's rights. Werlin declared Bill 60 to be "worse" than the existing statute[7] (i.e., the *LRA*) (*EJ*, June 19, 1987: G1).

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[6] The AFL also claimed that the law did not adequately protect employee benefit plans, that it did not provide revisions to the certification process and that it had not curtailed the involvement of the courts and police in disputes (submission 226: 2). Later, however, the submission acknowledged changes that provided greater protections for pensions and other benefits (Ibid: 3).

In submissions to the LLRC employers had characterized the LRA as a balanced statute in need of minor, if any, changes. In submissions to the Minister on Bill 60 employers and employer associations claimed that the existing legislation was preferable to the provisions in Bill 60 because the changes provided in Bill 60 "did not fairly balance the legitimate interest of employers and employees" but were "distinctly to the prejudice of employers" (submission 49(b): 1; circular: 1). Some employers claimed that the Bill was out of balance because the government had overreacted to "very specific and isolated issues that occasionally occur on the labour relations scene" (submission 49(b): 1). In other words the revisions were linked to the strike at Gainers.[8] An influential Chamber of Commerce wrote:

> ...when we view the more radical changes to the legislation, including: detailed proposal exchange [prior to collective bargaining]; employment preferences for employees returning from a strike over replacement workers; limitation of access to the courts; termination of agreements only through strike or lockout[9]; expedited arbitration; strike breaking; and reversal of onus of proof for employers facing allegations of unfair labour practices; we find these designed to deal with a few unfortunate situations out of the past [read Gainers] (submission 49(a): 2).

Employers claimed that Bill 60 was unfair to employers because the government had overreacted to the recent strikes. Bill 60 was based on a misrepresentation of labour relations realities.

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[7] Since an employer could still end a contract after a 25 hour lockout and hire strike replacements, the changes proposed in the Bill that would extend the collective bargaining process were seen to be "meaningless" (Editorial, *EJ*, June 20, 1987; A6). Such measures, it was believed, would only prolong bargaining "until employers are allowed to use the same tactics that made the Gainers dispute so vicious" (Ibid). They would only lengthen the period in which employers could bargain in bad faith and thereby increase the likelihood of a Gainers-style strike.

[8] Employers appeared loathe to mention the Gainers dispute by name because they did not see the event as evidence of the need for legal change. This was in contrast to the narrative on Gainers presented by labour, New Democrats and others in which the *LRA* was held directly accountable for the summer's unrest.

[9] This is a reference to s. 242(1) which states that a collective agreement shall remain in effect until a strike or lockout, or until a new agreement is concluded.

4. Management Rights in Collective Labour Relations

While the AFL claimed that Bill 60 had made no attempt to prohibit 25 hour lockouts, employers insisted that the new bridging arrangements, whereby a collective agreement would remain in effect until either a strike/lockout or a new agreement took effect (s. 242(1)), would mean that:

> ...an employer will no longer have the right to unilaterally change wages, working conditions, etc. upon the expiration of an agreement without officially locking out its employees (an action that the mediation provisions have been designed to prevent). This change may have the intended effect in that, under present circumstances, a labour group can prefer to have such changes made informally and quietly avoid a confrontation. This provision may, therefore, result in unnecessary confrontations. (submission 49 (Supplement): 14).

Changes in dispute resolution procedures and bridging arrangements would not reduce conflict, but increase it as employers sought ways to reassert management control (i.e., by locking out employees).

Employers also contended that the bridging clause was even more restrictive when viewed in conjunction with Bill 60's enhanced mediation procedures which had been recommended by the LLRC as part of an effort to increase the likelihood of settlement and to avoid strikes and lockouts. A strike/lockout vote (which was required before industrial action could be taken), however, could not be held until the mediation process had concluded and then a 14 day "cooling off" period had elapsed (s. 184 (2)). Employers complained that the timing of the Minister's referral of a dispute to mediation, and any subsequent delays that followed from this, placed additional restrictions on its ability to unilaterally change the terms and conditions of employment following a contract's expiration (submission 49(a): 9).

5. Certification Procedures and Narratives on Rights and Democracy

Narratives on democracy were used to draw attention to revisions in the area of certification. Employers had appealed to such narratives to support their demands for mandatory representation votes in submissions to the LLRC. Employers welcomed Bill 60's mandatory vote noting that it would "ensure, in all cases, a true expression of employee support" during union organization (submission 49 (supplement): 8). By ensuring a clear expression of employee opinion employers claimed that "ultimately" the provision would be of benefit to the employee (e.g. submission 209a: 7). This was not the AFL's account. In its submission to the LLRC, the AFL had informed the LLRC that such votes had "superficial democratic appeal" and that they would only afford employers "one last opportunity" to turn employees against unionisation (AFL, 1986: 43). The AFL reiterated these concerns to the Minister in its opposition to the mandatory vote.

Concerns about democracy were also used in relation to the change in the threshold of support (to 40%) in certification applications. Some employers posited that the reduction was an acceptable "trade off" for the mandatory vote (submission 49(a): 8) and commended the government for "balancing the rights and interests of unions, employers and employees" (submission 209a: 7). Others, however, saw no equity in the trade and questioned the legitimacy of a clause which, in their view, relaxed application requirements so that unionization would be made easier (e.g., submission 145(b): 4). Evidence of majority support was presented as democratic, while anything less was deemed anti-democratic and "regressive" (submission 153: 2).

6. The Right to Organize

Labour claimed that the certification provisions in Bill 60 did not adequately support labour's right to organize. The AFL expressed appreciation for the reduction in the level of union support (40 percent) in certification applications. Given the inequities that labour saw in the employment relationship and the further advantage that employers were expected to gain through a mandatory representation vote, the 40 percent threshold did not make for balanced legislation. The AFL also complained that the reduced threshold of support was not limited to certification applications but also to applications for certificate revocation. Employers had remained silent on this matter, presumably since provisions that aided decertification were not unacceptable.

7. Narratives on the Right to Strike

In its submission on Bill 60 the AFL reiterated the importance of labour's right to strike. The AFL acknowledged that strike action generated "problems and discomfort" yet it was seen to provide "the only way to settle serious disagreements" between employers and workers as it was regarded as the only "real source" of worker power (submission 226: 11). The work stoppage, in its view, made the collective bargaining system work— it was what pushed the parties towards an agreement (submission

226: 11). Without the strike labour believed that there was little incentive for the employer to settle a dispute. For labour the strike was an inalienable right; "the right-to-strike is fundamental to free collective bargaining, and...it remains a right that working people will never relinquish" (submission 226: 12).

Bill 60 was believed to infringe upon the right to strike in a number of ways[10]. The revised collective bargaining procedure was expected to introduce delays that labour predicted would effectively withhold its ability to strike. The AFL estimated that if all the steps under the Bill were to be exhausted by a "determined employer", a union could be prevented from taking strike action for a minimum of 151 days after the commencement of bargaining (submission 226: 10). Labour was also troubled by several new provisions contained in Division 12 of the Bill which dealt with "Strikes and Lockouts" directly. Under Section 186(1) the union had 90 days in which to call a strike following a successful strike vote. A failure to strike within this period meant that the union would require another vote. The Bill also stated that no strike vote could be taken two years following the lapse of a 14 day cooling off period (s. 186(2)). Since the vote was essential for strike action, the provision had also limited the period in which employees could legally conduct a strike. The Bill noted after this two year period had elapsed a "dispute shall be deemed to no longer exist" (s. 186(3)). Labour saw these as "unprecedented and unjustified" measures to restrict the right to strike (submission 226: 10).

D. Narratives on the Role of Government and Other Third Parties

Narratives on the role of government in labour relations were used to identify a number of "problems" in Bill 60. Employers were especially concerned about the provisions contained in Part 1 of the legislation that dealt with 'Communication and Education'. The LLRC had recommended the inclusion of such provisions on the grounds that they would promote stable industrial relations. The Committee also noted that they would "naturally" decrease the need for government intervention in labour relations (Alberta Labour, 1987a: 92). This, however, was not the same interpretation offered by employers and organized labour.

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[10] The AFL reiterated its long-standing objection to section 209 of Bill 60 which prohibited strike action by workers in the hospital sector; a ban introduced by Bill 44 in 1983.

In submissions to the LLRC employers had reacted positively to the idea of improving communication and educating the parties. Employers who had addressed this issue, however, had been careful to note that such improvements would not result from legislation. In submissions on Bill 60 employers expressed support for the spirit in which Part 1 had been drafted but viewed the provisions themselves with suspicion. The contentious provisions were those that set out new powers for the Minister of Labour and for Cabinet. Under section 6 the Minister could collect information and statistics pertaining to employment standards and labour relations and then disseminate information (s. 6). The Minister could also establish 'multi-sector advisory councils' (s. 7) to advise on employment standards and labour relations and convene round table conferences, consisting of representatives of business, unions, academics and others (s. 8). Section 9 allowed the Minister to "direct" the parties to participate in structures and procedures established by the Lieutenant Governor in Council to facilitate communication and the exchange of information (s. 9(1)(b)).

Employers claimed that the provisions were unnecessary and their inclusion constituted meddling by the government. A document circulated at an informational seminar on Bill 60 explained that:

> The provisions outlined in this Part represent an attempt to improve the labour relations climate in Alberta. We do not feel that the intricate and fragile relationships between employee, employer, union and government can or should be legislated to excess. Rather than attempting to impose a communications process upon the parties, Bill 60 should remain silent on this issue to allow the parties to continue to develop a mature relationship. We feel many of the provisions in Part I represent an excessive and unnecessary form of government interference (submission 49 (supplement); 2).

As far as many employers could see, the provisions would create an expanded rather than a more limited role for government in employment matters.

Employers insisted that a "meaningful" and "effective" communication process could not be imposed on the parties, but needed to evolve free from government regulation (submission 127:3; submission 52: 2). Forcing consultation, for instance, could backfire and place additional strains on workplace relations (submission 16(b): 2). For employers, the government's efforts to mandate harmonious workplace relations were redundant and could prove potentially damaging to those procedures and structures that had been set in place (submission 111, p. 2). Some companies complained that they had already obtained "open communication" and "mutual trust" with their employees and that Bill 60 constituted a threat to such progress (submission 96(c): 2). Employers concluded that voluntary efforts to improve workplace relations were much preferable to government legislation.

The provisions in Part 1 of Bill 60 were also identified as problematic by the AFL. Like employers, the Federation acknowledged the "desirability" of employee-employer communication and education, but regarded the government's efforts to legislate in theses areas as "ill-conceived" (submission 226: 5, 6). Labour objected to sections 6 through 9 on the grounds that 'multi-sector advisory councils' and the "consultative procedures" would interfere with the union's ability to represent its members.

Employers invoked narratives on government interference to identify problems in Part II of the Bill on employment standards. The new provisions were believed to be at odds with traditional objectives of employment standards legislation: to set *minimum* standards. This argument was made most forcefully with respect to what were known as the 'custom and practice' provisions (see Figure 2). The first involved Bill 60's definition of "general holiday", a term which had important implications for the payment of wages[11]. Under Bill 60, however, the definition was expanded to include "any other day designated by an employer in accordance with an agreement or by an established custom or practice" (s. 4(h). The Bill also stated that where an employer, either by agreement or through custom or practice, had provided wages and benefits greater than the minimums provided in Part II of the Bill, he/she "shall give those greater benefits to his employees" (s. 10(2)). Employers expressed concern that once benefits above the statutory minimum had been granted, either through agreement or by custom or practice, they would then be obliged to continue to provide them. One of the circulars distributed to employers and employer association offered the following interpretation of these provisions:

> If you have regularly let your employees go home early on Christmas eve or New Year's Eve...you must continue to provide those benefits as if they were legislated. If you gave a

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[11] Under the ESA this term made reference to national holidays, such as Christmas Day and Canada Day.

> Christmas turkey as a bonus[12]...those benefits would now appear to be legislated...All of your general benefit policies and procedures would now appear to be legislated without you having the ability to alter them. This provision [s. 10(2)] will undoubtedly create havoc with a number of employers. It legislates what employers have always resisted in collective bargaining and unions have regularly sought (included with submission 41: 3).

Reference to collective bargaining was significant as it was used to support the claim that the philosophy of Bill 60 had shifted away from setting minimum terms and conditions of employment (e.g. submission 49(c): 1). Some employers argued that the changes were tantamount to the imposition of a collective agreement (e.g., submission 127). There were charges that the government had acted as a "bargaining agent" for unorganized workers in the Province (submission, 18 (a):4). An association of municipalities characterized the changes as an attempt to provide a "'minimum collective agreement'" for all non-union employees (submission, 18 (a), p. 4). While it was acceptable for the government to set minimum standards, it was considered "wholly inappropriate" for it to press for more on behalf of workers, as was the employer perception of Bill 60.

The government presented the new collective bargaining provisions as embodying a new approach to labour relations, whereby the two parties were expected to recognize their mutual interests and to settle differences without resort to conflict. The government contended that the new procedures had been drafted so that the parties would be better able to relate to each other and resolve difficulties without as much assistance from third parties. In a news release on Bill 60, Labour Minister, Ian Reid maintained that the changes in Part III of the legislation would increase "the responsibility of the parties for their relationship" (Alberta, 1987: 2). Reid also stated that:

> The role of government has been carefully restrained throughout this bill. The parties have been given the means and the authority to deal effective with each other. The success that they achieve will be up to them and depend on their commitment to each other (Alberta, 1987: 3)

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[12] As a result of this interpretation, the provision also came to be known as the "Christmas Turkey" clause.

This was significant. By shifting responsibility for the state of labour relations to the parties involved, the government had taken a pre-emptive defense against the kind of charges that were brought against Alberta's labour laws in the context of the Gainers dispute. Insisting that negotiations were the responsibility of the parties provided a way for the government to shift blame for labour disputes away from itself and its laws.

Neither employers nor labour shared the Minister's assessment of the labour relations provisions. In their view government intervention had increased not decreased. Both parties cited changes in third party intervention as evidence of this claim.[13] Under the *LRA* the Minister, before or during a legal strike/lockout, was at liberty to refer a dispute to a Disputes Inquiry Board (DIB). The DIB would then investigate and issue recommendations, which, if both parties accepted, would be included in a collective agreement. Bill 60 retained provisions for the DIB, but introduced enhanced meditation—a two stage process consisting of a mediator and a mediation board, which if invoked would delay recourse to the strike/lockout. Employers viewed the enhanced mediation provisions as a return to the *status quo ante*: to compulsory conciliation. Such procedures, employers and labour argued, would leave the process overly structured and intrusive. An association of municipalities questioned the legitimacy of the provisions which provided for enhanced mediation at the Minister's request:

> If neither party has requested the services of a mediator, we question the need, or even the *right to Government forcing one upon the parties*. The best agreement has always been one negotiated between a union and an employer (submission 18 (a): 13; emphasis added).

Like many employers, the AFL objected to enhanced mediation on the grounds that it constituted "unwarranted government intervention" (submission 226: 8).

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[13] Employers and employers saw the mandatory exchange of written proposals at the outset of bargaining as further meddling in collective bargaining (s. 175(1)(b)). A subsequent clause also indicated that no proposals could be added after the exchange had taken place. Section 175(2) stated that no additional proposals could be added unless (a) the proposals relate to matters that were in dispute at the time that proposals were exchanged and (b) the other party consents to the addition. Both parties explained that the restrictions imposed on amending proposals would force them to use excessive caution. As one employer noted, in an attempt to "play it safe" parties would "load" proposals thereby drawing out negotiations and increasing the likelihood of impasse (submission 49(c): 8; submission 212(a): 8). For this reason the provision was expected to precipitate conflict that was otherwise avoidable and not to improve union-management relations as the Minister had envisaged (submission 226: 9). The AFL made a similar case against the exchange of bargaining proposals.

Employers and the AFL also expressed concern about changes in the procedures of the ALRB. The government claimed that changes in the Board's procedures for handling complaints had been made in an effort to "streamline" the Board and were consistent with the new approach to collective bargaining where the parties' assumed increased responsibility for their relationship (Alberta, 1987: 2). The Bill proposed a three stage Board hearing process (Ibid). The Board would first attempt to settle disputes informally through a Board member or labour relations officer. If a settlement could not be obtained the Chairman of the ALRB could refer "any matter" to a panel of one to three Board members for the purposes of "conducting hearings, engaging in efforts at settlement and issuing reports and decisions" (s. 123(9)). The panel would operate with the full powers of the Board but in a less formal manner. If the matter could not be resolved, the parties could then appeal for a formal hearing before a five-person board. The government indicted that it expected that most matters would be resolved before proceeding to a formal hearing (Alberta, 1987: (Press Release): 5). Neither labour nor employers shared the government's optimism about the procedures. Rather than streamline procedures, the informal hearings were expected to introduce a new layer of complexity, that would increase delays.

Employer's focused on what they saw as the "alarming expansion" of Board powers (submission 49a: 6). Some argued that passage of Bill 60 would afford the ALRB "unlimited" powers to investigate, powers which were also seen to conflict with its traditional quasi-judicial responsibilities (Circular: 6; submission 4: 18). Employers also objected to Board's ability to award costs in circumstances where an application had been found to be *inter alia* "trivial" and "vexatious" (s. 124(2)(h)).

Employers posited that new Board procedures would limit their ability to access the courts especially during an illegal strike. This interpretation flowed from section 204 of the Bill which stated that a court could not issue injunctions restraining strikes or picketing unless: (a) there was a "reasonable likelihood of danger to persons or property"; (b) application to the Board was "impractical"; and (c) an order issued by the Board had been contravened. Employers clearly preferred the *status quo*, where they could appeal to the courts directly[14].

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[14] The strength of the existing regime, wrote one construction association, was that it made for "speedy justice". Employers claimed that the new provision was not fair as it threatened the enforcement of their rights. Rather than pursuing their legal rights under the unwieldy procedures set out in the Bill, some employers argued that they would be compelled to "cave in" to labour's demands (Circular: 9). In this sense applications to the Board (rather than the courts) would amount to "justice delayed" and ultimately "justice denied" (Circular: 9). The new Board procedures would deny employers access to their rights—leaving them at the mercy of union demands.

Though labour was skeptical of the benefits that would accrue from the proposed informal Board hearings, it did not share employers' concerns about the expansion of Board powers. The AFL had called for a greater role for the Board in the administration of Alberta's labour legislation and a reduced role for the courts (submission 226: 13). In labour's estimation section 204 attempts to limit the role of the courts in strikes/lockouts in were without substance. Restrictions on court intervention, labour contended, had been offset by subsection (a) which allowed employers to appeal to the courts where there was "a reasonable likelihood of danger to persons or property." In the AFL's opinion this would have:

> the practical effect of retaining the *status quo*, since the legal tests for injunctions refer to danger to persons or property (submission 226: 13).

1. Narratives on Law and Order and the Public Interest

Employers maintained that the ability to directly access the courts during strikes/lockouts was an imperative especially during extreme situations such as those which had developed at Gainer's, Fletcher's, Suncor and Zeilder's. Employers claimed that restricting employer access to the courts would have the effect of exacerbating picket line tensions. A firm in the meat packing industry submitted that:

> If Bill 60 was inspired by an interest in mitigating violence, we feel that this object will...not be met. Firms have tolerated lawlessness on the picket lines for short periods since we could usually count on quickly gathering enough evidence of lawlessness to get a court injunction. The new bill will...likely result in more violence over longer periods of time (submission 93 (a): 2).

Avoiding strike violence was to be accomplished not through a ban on replacement workers as was contended in the flawed law narrative on Gainers but through an employer's ability to obtain swift court action. Expeditious intervention by the courts was a way to secure law and order and industrial peace. An association representing non-union construction firms wrote:

> The courts intervene where necessary quickly to ensure explosive situations are kept under control, minimizing violence, injuries and damage to property. Sections 204 and 205 will result in very slow access to the courts. Unlawful activity that could have been quickly curtailed will be front-page headlines for days and possibly weeks...These rules make no labour relations sense, and are contrary to the interest of the public (submission 209 (a): 10).

2. The Political Connotations of Government Interference

The government's attempts to reshape labour-management relations, by increasing its role in dispute resolution and through its education and communication initiatives, were rejected by employers and labour alike. Both constituencies appealed to narratives on intervention to show how the Bill had not conformed with expectations about government's role in labour relations. Some employers were very direct about what they expected from a pro-business government. There was an expectation that the Tories would provide a less rigid regulatory environment that was favourable to business interests.[15] A president of a large oil firm noted that:

> It is confusing to me that a Party elected on a free enterprise platform, supportive of the role of business, looking for sound ways to simplify the system would take steps to add to the bureaucracy and control (submission 149: 1).

Others were more direct and forceful in their attack, insisting that the government had introduced "socialist policies" (submission 215: 1). A small business owner in Calgary wrote:

> These measures...are not reflective of a conservative government, but of a government committed to a new social order, a socialist society in which the government, the state,

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[15]. Some employers tried to rationalize the apparent inconsistency between Bill 60 and the Conservative party's philosophy by turning to the results of the May, 1986 election. One employer commented:

> ...I would suggest that your proposals have brought about by a fear in your party that the NDP will make further inroads into the ranks of the voters, if you do not make concessions to labour in the manner you have proposed

> controls and monitors the activities of its's (*sic*) citizens (submission 124, p. 3).

Some employers even threatened to withdraw their support from the Conservatives if Bill 60 became law. A restaurateur commented that:

> ...the Conservative Government's declared position has traditionally been supportive of entrepreneurs and small business...if the these proposals exemplify the Government's current attitude, we interpret this to be a complete political turn around. Such a stance brings into serious question the support that the Government might hope to receive in the next election from the small business sector (submission 186: 2).

In light of the losses sustained by the Tories in the 1986 election and the emergence of a viable political opposition, such threats were likely unsettling for the government.

In submissions on Bill 60 there is a strong sense that in trying to reframe labour relations the government had overstepped its bounds. Employers made clear that this was not legislation that it would have expected or that it could support. Narratives on excessive government intervention and the political connotations of the Bill may be seen as an attempt by employers to challenge what appeared to be the action of a relatively autonomous state. As the Marxist analyst would have predicted, employers responded to the law negatively and issued demands for changes that were more congruent with their interests. My focus on narrative in this instance shows how employers came to see many of the changes as anti-business and the strategies that were used to pull the government back from its relatively autonomous position.

E. Narratives on the Economy

Narratives on the economy were a salient feature of employer submissions to the Minister on Bill 60. In a continued effort to show that legal change was unwarranted some employers continued to draw on narratives that linked the events at Gainers to changes in the economy. A public sector employer explained that:

> The attempt through legislation to produce harmonious labour relations fails to take into account circumstances which are created when the economy is in a state of recession. When governments are no longer able to provide levels of funding consistent with the consumer price index and the private sector is limited by the decreasing demands of the consumer, but at the same time labour seeks job security, increases in pay and benefits, [...] no amount of [...] change to legislation is going to eliminate the problems experienced in a very small number of high profile disputes (Submission 268: 2).

A more common strategy used by employers to discredit Bill 60 was to focus on the negative consequences of its revised provisions. There were charges that the legislation was a threat to the "fragile state of the Alberta economy" (submission 4: 3).In briefs to the LLRC employers had urged the government to consider how any changes (especially those proposals based on the flawed law account of the Gainers dispute) would impact the economy. In their submissions on Bill 60 employers continued to invoke narratives on flexibility and competitiveness and the 'new realities' of business to oppose the new provisions. There were some new developments. The issue of employment costs was a much more salient feature of submissions on Bill 60.

1. Narratives on Costs

Employers identified a range of "problem" clauses in narratives on costs (see Table 6.2). Narratives on costs were used primarily to undermine changes that had been proposed in Part II of the Bill on employment standards. A chief concern was that some of the amendments—such as increases in vacation entitlements—would directly increase employer costs.[16] Similar concerns were raised about provisions affecting hours of work. Under the *ESA* employers and employees were permitted to strike overtime agreements in which workers could take time off in lieu of overtime pay (s. 24-26). Bill 60, however, made no provision for such "time off" arrangements. Employers insisted that the absence of such provisions would prove to be an economic strain. Organizations that relied on public funding were especially troubled by such proposals. In the context of fiscal restraint, school boards, charities and other public and para-public organizations maintained that they would be unable to turn to government to cover budget shortfalls. One Edmonton charity elaborated on the financial implications of the repeal of the time off in lieu provisions:

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[16] Public school boards were especially critical of the decision to combine employment standards and collective bargaining provisions in a single statute. Alberta school boards' concerns about amalgamation were driven by the issue of cost. Under the existing system, teachers were exempt from a number of sections of the *Employment Standards Act* governing, *inter alia*, overtime, and vacation pay. Under the *Alberta School Act* teachers were paid salaries and were therefore not entitled to overtime or vacation pay. School boards claimed that with the passage of Bill 60 teachers would be subject to all labour standards which meant Boards could be liable for an additional $12 million annually in operating costs (*EJ*, October 23, 1987; B2).

> We have always operated on a tight budget, even in the so-called "good times" before government began cutting back its budgets. We have only been able to pay overtime by giving lieu time off to employees (with their agreement of course). Sometimes overtime is unavoidable and to pay cash for this would put us seriously over our budget (submission 97: 1).

Some employer groups tried to estimate the dollar-costs of the repeal of the time off provisions. There were predictions, for instance, that the changes would cost the City of Calgary an additional six to seven million dollars annually to continue its bus operations alone, an increase that, it was suggested, would have to be absorbed by the tax payer (submission 4: 8).

Table 6.2 Provisions Identified as Problematic in Narratives on Increased Employment Costs

Provision	***Employment Standards Act***	**Bill 60**
Definition of "General Holiday": Includes reference to "custom and practice".	No s.1(1)(g)	Yes s.4(h)
Civil Remedies and greater benefits: Contains reference to established "custom and practice"	No s.3	Yes s.10(2)

Hours of Work and Overtime pay:		
Maximum hours/day	12	Reduced to 10
Time off in lieu of overtime pay	Yes (s. 24-s. 25)	No
Overtime Agreements	Permissible (s. 26)	Deleted
Compressed work week	Yes	Yes. 3 x 12 hour shifts are no longer permissible, however.
Vacation pay	Provides 2 weeks annual vacation after 1 year of employment s. 34(1)	Also provides 3 weeks annual vacation after 5 years of employment (s. 38(1)(b)

2. Narratives on Flexibility

In addition to increasing labour costs, employers claimed that the proposed employment standards were unacceptable because they would reduce employer flexibility, a concern that had been raised in employer briefs to the LLRC (see Table 6.3). There were repeated complaints about s. 28(1) which reduced the maximum hours of work per day from 12 to ten. Employers claimed that this change would interfere with compressed work schedules where employees worked three 12 hour shifts per week. Under Bill 60 a work week could only be compressed into four ten hour shifts. There were also concerns about section 31(3) which called for a half hour of rest for every five hours of work. A Chamber of Commerce claimed that this was impractical especially for continuous operations where rest breaks were taken during "equipment changes or other forms of downtime" (submission 49(b): 3). Employers also complained about tighter restrictions on the payment of wages to employees, and the greater inflexibility resulting from increased vacations and the "custom and practice" provisions.

Table 6.3 Provisions Identified as Problematic in Narratives on Flexibility.

Provision	***Employment Standards Act***	**Bill 60**
Definition of "General Holiday": Includes reference to "custom and practice".	No (s.1(1)(g))	Yes s.4(h)
Civil Remedies and greater benefits: Contains reference to established "custom and practice"	No s.3	Yes s.10(2)
Payment of Wages due	Within *10 days* of the end of the pay period(s. 19(1)).	Within *7 days* of the end of the pay period (s. 25(1))

Hours of Work and Overtime pay:		
Maximum hours/day	12	Reduced to 10
Time off in lieu of overtime pay	Yes (s. 24-s. 25)	No
Overtime Agreements	Permissible (s. 26)	Deleted
Compressed work week	Yes	Yes though 3 x 12 hour shifts are no longer permissible.
Hours of Rest: A half hour rest for every 5 consecutive hours of work.	No such provision	Yes (s. 31(3)).
Vacation pay	Provides 2 weeks annual vacation after 1 year of employment s. 34(1)	Also provides 3 weeks annual vacation after 5 years of employment (s. 38(1)(b)
Annual Vacation to be granted in periods of not less than one week	No such provision	Yes. (s. 42(1))
Termination for redundancy or economic change	No	Yes: where an employer intends to terminate the employment of 50+ workers. Must provide the Minister with 4 weeks written notice (s. 62)

Employment costs and flexibility were both identified as critical elements in Alberta's economic future. Increased costs and reduced flexibility would mean that Alberta would have greater difficulty attracting new investment to the province. A Chamber of Commerce explained that:

> A rigid, bureaucratic employment environment will discourage business investment in the Province, a direct conflict with the Province's need for economic diversification. To sustain the Province's present level and eventually grow, there cannot be added costs of doing business which are a disincentive to employment and investment (submission 4: 4).

Employers predicted that the passage of Bill 60 would spark a flight of capital from the province, as companies sought more favourable environs in which to conduct business (e.g., submission 93a). A small Edmonton business owner wrote that if the Bill were to pass, "large industry will choose to locate in a jurisdiction that has a less costly and more flexible labour code" (submission 201, p.1).

3. Narratives on Competitiveness

In employer submissions on Bill 60 employment costs and flexibility continued to be linked to competitiveness. An employer association in the energy sector maintained that the proposed employment standards would "interfere with management's flexibility and ability to operate in a competitive manner" (submission 105: 1). An employer in the energy sector called for the government to remove changes in employment standards "that inhibit[s] the type of adjustments that are necessary in a competitive economy" (submission 148: 2). Other employers began to discuss business' competitive position in relation to bilateral free trade with the United States. It is possible that some employers may have had free trade in mind when drafting their submissions to the LLRC (especially given the coincidence of the labour review with the free trade negotiations), but none contained any explicit reference to the initiative. Submissions on Bill 60, however, were drafted at a time when free trade with the United States had become the subject of national debate

Steps toward free trade with the United States and developments in Alberta's labour review initiative occurred concurrently (see Table 6.4). In September, 1985 Canadian Prime Minister Brian Mulroney made known his government's intent to negotiate a bilateral free trade arrangement with the United States. In April, 1986, two months prior to the strike at Gainers, formal talks between delegations from the two countries began. In May, 1986, the Alberta government released *Beyond Alberta's Borders: The Trade Challenge*. The document contained answers to frequently asked questions about the trade negotiations which "clearly reflected" the government's position on trade issues (Alberta, 1986a: 6). The document indicated that the government of Alberta was very much in support of the discussions. After 16 months of negotiations, the two countries secured an agreement on October 3, 1987. Many employers submitted their briefs on Bill 60 in the months leading up to the agreement, while others submitted their views after October 3, with the knowledge that an agreement had been reached.

Table 6.4 Free Trade developments and key events in the Alberta Labour Law Review Initiative.

Date	*Developments in the free trade initiative*	*Developments in the Alberta Labour Law Review*
1985 September	Mulroney government announces its plans to pursue free trade with the United States	
1986 April	Formal free trade negotiations commence	
May	Alberta government releases pro-free trade document "Beyond Alberta's Borders"	
June 1		Dispute at Gainers commences
June 12		Throne Speech calls for a full review of the Alberta labour laws
August 1		Minister announces appointees to the LLRC
September		LLRC begins its fact-finding mission
November		The LLRC issues its *Interim Report*
December		Gainers dispute ends
1987 February 17		The LLRC issues recommendations in its *Final Report*
June 17		Bill 60 is tabled in the Alberta legislature
October 3	A free trade agreement is reached	

1988 January 1	P.M. Mulroney and U.S. President Reagan sign an agreement on free trade	
April 15		Bill 22, the Labour Relations Code received first reading
May	Bill C-130, free trade legislation, is tabled in Parliament	
June 7-30		Bill 22 is read a second time, sent to Committee and then read a third time.
July 6		Bill 22 receives Royal Assent
November 21	General election--free trade is a major issue	
November 28		Bill 22 is proclaimed
1989 January 1	The Free Trade Agreement comes into force	

4. The Intersection of Narratives on Free Trade and Narratives on Alberta Labour Law

Employer submissions on Bill 60 contained elements of narratives on free trade. Employers contended that labour and employment policy needed to be written with free trade in mind. The governments needed to ensure that it fostered a regulatory environment that did not undermine business' competitive position. As one employer in the meat packing sector commented: "Labour laws, like labour rates, must be competitive" (submission 93(a): 2). A large firm operating in the energy sector wrote:

> With the advent of a free trade arrangement, it is imperative that Labor and Labor Standards Legislation ensure that Alberta is capable of remaining competitive in all aspects of the business environment (submission 148: 2).

Bill 60, however, was presented as having fallen far short of this objective. As I have outlined earlier employers expected that the proposed employment standards set out in Part II would increase employment costs. Increased costs were deemed critical to Alberta business' ability to compete, and account for the great deal of attention that these provisions received. In a submission to the Minister an employer wrote:

> I have tried to impress on you the critical role that labour regulations play in the determination of our competitive ability. Our industry exists in a North American market, and the Free Trade Agreement will secure this situation for the future. We must be competitive in an international context, and this means our labour costs must be brought in line with our U.S. competitors (submission 93b: 1).

The Bill was also seen to have made the legal framework unnecessarily rigid and complicated. The increased labour costs and regulation associated with Bill 60 did not foster the kind of environment in which business expected to thrive under free trade.

In an attempt to illustrate how Bill 60 would handicap Alberta business in a free trade environment, a number of employers drew comparisons between Alberta's and the United States' employment policies. An employer in the meat packing sector wrote:

> In the U.S. the regulatory environment seldom intrudes to describe when each coffee break should occur, when, if and on what terms overtime work can be undertaken, that employees are entitled to certain lay-offs or closure requirements, certain holidays, an ever increasing package of statutory holidays and so on. When they do, their laws are seldom as intrusive as those in Canada. And, in the U.S. by way of contrast, we often see such legislation as "Right to Work"... (submission 93 (b): 2).

The message was that the legislative regime in the United States would offer employers a discernable advantage over those employers operating under the provisions set out in Bill 60. The proposed legislation was seen as a competitive liability. Since Alberta-based business were in direct competition with American employers, employers urged the government to be aware of comparable legislation in the United States. An employer in the meat packing sector wrote:

> ...we would once again advise you that for our company, and for many other Alberta companies, the relevant comparison should be with the legislation in a number of U.S. jurisdictions. In this context I believe there can be no disagreement that the proposed Alberta legislation is far more intrusive, onerous and costly than is the case for our U.S. based competitors (submission 93(d): 3).

Employers had reacted to the proposed legal changes much as the anti-free trade activists expected they would. They had presented labour law as a competitive cost liability that was up for negotiation.

5. Competing Accounts of Labour Law and the Economy

Organized labour challenged the idea that labour law should keep Alberta business competitive. Labour claimed that this had been made clear in Bill 60's preamble with its reference to "prospering in a competitive world-wide market". One of the few unions to submit its views to the Minister on Bill 60 explained that "The function proposed for the Code is to promote a labour relations climate conducive to the interest of business..." (submission 30: 3). In its view the legitimate role of labour law was to protect working people and to support the institution of collective bargaining. The AFL interpreted the preamble as a harbinger of declining employment standards. The statements signified:

> a willingness to lower the general level of employment terms and conditions to the abysmal level necessary to be competitive with such labour 'hell-holes' as South Korea, Taiwan, the Philippines and Southern United States. As such, they are totally inappropriate to a Labour Code! (submission 226: 4).

The Federation seemed to be suggesting that the government was prepared to force employment standards downwards in the name of competitiveness. In doing so the AFL had adopted elements of anti-free trade narratives.

F. Narratives on the Legitimacy of Unions and Collective Bargaining

1. The Anti-union Nature of Bill 60

In its submission to the Minister the AFL contended that Bill 60 "adds to the anti-union orientation of the legislation" (Submission 226: 4). Labour claimed that this was evident in a number of areas of the Bill including the preamble. The AFL insisted that reference to competitive markets indicated that the law was committed to making the labour relations environment conducive for entrepreneurial activity and unconcerned with the promotion of collective bargaining and the protection of worker rights.

A number of other provisions were identified as "anti-union" because they were expected to circumvent the exclusive authority of the certified bargaining agent. The AFL was alarmed by sections six through nine in Part 1 of the Bill because it believed they provided for "processes and structures" that would "have the effect of by-passing the exclusive, statutory status for certified unions which employers must recognize if collective bargaining is to work" (submission 226: 5). The structures for consultation and communication, or "work councils" as the AFL described them, in which employees could be "direct[ed]" to participate, were seen by the AFL to provide an "alternative" to unions and collective bargaining (Ibid)[17].

Labour also claimed that revisions in third party intervention procedures would by-pass the bargaining unit. The AFL was especially displeased with section 181(2) which authorized the ALRB to conduct a vote on the acceptability of the mediation board's recommendations to employees.[18] Bill 60 proposed that where employees and the employer in a Board-supervised vote/poll both accepted the Board's recommendations, such proposals would become binding upon the parties and subsequently included in a collective agreement (s. 181(4)) (submission 226: 9). The AFL claimed that the mediation procedures constituted a way to eliminate the bargaining agent from the process. The AFL saw section 176(1) in the same terms. The section stated that:

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[17] Some employers had argued that the proposed these would unfairly benefit unions, since they would use such bodies as a "base" to organize workers (submission 18(a): 3).

[18] A vote would be conducted where a party had failed to notify the mediator (or the Minister in the case of a Mediation Board) of the acceptability of the mediator's/mediation board recommendations within ten days of their issuance.

> At any time after the exchange of proposals...either party to the collective bargaining may apply to the Board [i.e. the ALRB] to supervise a vote as to the acceptance or rejection of its most recent proposals by the other party

Labour maintained that such initiatives represented an attempt by the government to usurp its authority as the worker's exclusive representative in collective bargaining.

The AFL also called for the withdrawal of section 140 of Bill 60 on the grounds that it was anti-union. The provision exempted employees from paying union dues on religious grounds. Employees, who because of their religious beliefs object either to membership in a trade union or paying dues to a union, would not be required to join a union but would be required to remit fees (equal to union dues) to a charitable organization.[19] The AFL maintained that this was in violation of the Rand Formula—which it regarded as a major tenet of Canada's labour relations system—whereby employees could refuse to become union members but would remain obligated to make dues payments to the union (on the grounds that all employees were provided a service by the union).

2. The Government Responds to Narratives on the Economy

The Labour Minister contended that employer accounts of Bill 60 had misinterpreted the intent of his legislation. The government, Reid claimed, did recognize the importance of the economy and had drafted Bill 60 with this in mind. Responding to an employer[20] in the construction sector who had urged the Minister to provide a Bill that would guarantee the "right to compete freely" (submission 303), the Minister wrote:

> The competitive position of any Alberta business is important to the government and plays an important role in the provincial economy. Government legislation must be sensitive

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[19] Section 140(1) stated that a union could negotiate agreements whereby all employees in a bargaining unit are required to be members of the union thereby making closed shop union security clauses permissible. Fisher & Robb (1988: 294) suggest that section 140(2), by allowing employees to avoid making payments to the union on religious grounds, may be interpreted by labour as a small step towards "right to work" legislation. In its submission on Bill 60, the AFL did not make this claim though it obviously saw the clause as a threat.

[20] In a number of cases the Minister provided more detailed, two to three page responses to concerns raised in submissions, which provided a better understanding of the government's views on labour law and the economy. Much of the Minister's correspondence (that I was able to access) simply acknowledged receipt of a written brief and directed the author to view an enclosed copy of *Alberta Labour News* which had been drafted to clarify the Bill's "real" intent.

> to the needs of all Albertans and it is not intended that Bill 60 interfere with the viability of business. This focus will remain throughout your government's review of this legislation. (Minister's response to submission 303: 1)

Though some employers saw the law as a measure to undermine competitiveness, the Minister came to its defense arguing that this had not been the intent. Elsewhere Reid wrote that the government was "extremely sensitive" to the competitive position of Alberta business and that this had been:

> evidenced by the fact that there has been no changes to employment standards legislation since 1981 that would result in employers incurring direct increased labour costs (Reid's response to submission 93 (b):1).

Reid later conceded that Bill 60 had increased some vacation entitlements, but suggested that the costs associated with the legislation had been overstated. The provision requiring employers to provide notice of termination for either redundancy or economic change or compensation in lieu of such notice (s. 56(2)) had been "completely misinterpreted." Rather than raise the minimum standards and raise employer costs as noted by many employers, the measure had been intended for communication and education purposes. It was to provide "an early warning system" that would afford both employers and employees time to be made aware of government adjustment programs benefiting all parties concerned (Reid's response to submission 93(b):2). Employers, in Reid's estimation, had read Bill 60 in a way that it was not intended.

By early November, 1987 there were indications that the government was prepared to amend its legislation in the 1988 Spring session. The legislation, Reid noted, required "fine-tuning" so that ambiguities could be removed and the government's real intentions made clear. (*EJ*, November 5, 1987; E7).[21] The revised legislation would, for instance, make clear that overtime agreements and time off in lieu of overtime pay arrangements were permissible and clear up confusion over customary benefits. The Minister refused, however, to commit to changes in the collective bargaining process[22]. The press speculated that Reid's announcements had been prompted by demands for change from the Edmonton Chamber of Commerce, but Reid refused to comment on the matter. Despite Reid's reassurances, the Edmonton Chamber continued to oppose Bill 60 on the grounds that it was harmful to the economy (*EJ*, November 6, 1987; B4).

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[21]. Later, Deputy Labour Minister, Clint Mellors indicated that awkward phrasing and the confusion that this had caused was a reflection of the "haste" with which the Bill had been written (*EJ*, January 21, 1987; B1).

[22]. In January, 1988 Deputy Labour Minister, Clint Mellors indicated that changes would be made to the collective bargaining procedures (*EJ*, January 21, 1987; B1).

For AFL President, Dave Werlin, the connection between the Chamber's demands and the Minister's announcement was clear.[23] The Minister's announcements had focused on concerns raised by employers, as had the government's new newsletter, the *Alberta Labour News*, which debuted in December, 1987. In this document the Minister provided clarification on 'custom and practice' provisions, the compressed work week, notice of termination, the powers of employment standards officers; rest periods; wages and vacations. Labour insisted that the government document was a "point by point" response to employer concerns and was proof that the Minister had taken much "more seriously" employer readings of Bill 60. Nowhere in the newsletter was there any mention of the concerns that had been raised by labour in narratives on labour's rights and the Bill's anti-unionism.

3. Reviving Narratives on Alberta's Flawed Law

Though the AFL did not organize a letter-writing campaign against Bill 60, the Federation did find other ways to make known its opposition to the legislation. In his 1987 Labour Day address AFL President, Dave Werlin re-issued demands for a ban on replacement workers, spin-offs and 25 hour lockouts. Werlin predicted more labour unrest if the government failed to act on its demands for change (*EJ*, September 6, 1987; A2). Labour unrest was reported in the summer of 1987, though not to the degree that it had occurred the previous summer, and again the AFL tried to link these incidents to the *LRA*.

Shortly before the tabling of Bill 60 the Letter Carriers Union of Canada (LCUC) began a rotating national strike in an effort to resist Canada Post's demands for concessions. Strike action was called in Edmonton on June 17th and violence and injuries quickly ensued (*EJ*, June 18, 1987; A1). Similar developments were repeated in dozens of locations across the country in a national strike that was later described as Canada's most violent mail dispute (*EJ*, July 5, 1987; A1). Ironically, violent incidents and Canada Post's (CP) application for injunctive relief from picketing stole the *Edmonton Journal* headlines from the introduction of the Minister's new Bill to the legislature.

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[23] Labour saw this as part of a "major campaign" to "move the legislation even farther to the right" (*EJ*, November 5, 1987; E7).

Even though the postal strike fell under the federal jurisdiction and thus under the *Canada Labour Code*, the AFL tried to make a case that developments at Canada Post picket lines highlighted problems in Alberta's labour legislation. Labour used the strike primarily to support its demands for a ban on employers' use of replacement labour. To do this it explained the events in terms of the 1986 Gainers strike. Werlin accused the police of using "rough and provocative tactics", and questioned whether they had learned "anything from Gainers" (*EJ*, June 18, 1987: A1). At a July 1, 1987 rally organized to support the striking letter carriers, AFL officials urged the Alberta government to prohibit strike replacements. Werlin led a crowd of 500[24] in a chant of "no more scabs".

By the end of September Canadians were bracing for yet another round of national rotating postal strike, this time by 23,000 inside postal workers represented by the Canadian Union of Postal Workers (CUPW). The central issue for the union was job security as it was Canada Post's plans to privatize postal counter service. Werlin warned that businesses that took on a postal franchise during the strike would be acting as "strikebreakers", and would be subject to an AFL boycott (*EJ*, October 4, 1987: A1). As in the 1987 letter carrier's strike Canada Post brought in replacements to maintain mail service, a move which again resulted in picket line scuffles in Alberta and at various locales across the country (*EJ*, October 9, 1987: A1).

AFL officials reacted to the CUPW strike by noting how it resembled developments in the 1986 dispute at Gainers. The critical link between the strikes was management's deployment of replacement labour.

> The hiring of scabs to replace workers locked out or on strike gained prominence when that arch neo-conservative Peter Pocklington of Gainers, became a scab herder for the second time in 1986. He was supported by the Alberta Tories.
>
> Now this is the official policy of Mulroney and his government of Ottawa (Don Aitken, AFL, Secretary Treasurer, *EJ*, October 17, 1987: A7).

Labour officials also contended that Alberta labour relations had proven instructive for the federal government in its dealing with postal unions.

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[24]. An *Edmonton Journal* photograph shows one participant carrying a placard that was used in the "change the law" campaign initiated during Gainers.

The AFL also linked Canada Post's privatization efforts to spin-offs in the Alberta construction sector:

> The spin-off jobs where workers are exploited for lower wages started in Alberta with the construction industry now it's become the policy of the Mulroney Tories who want to introduce franchising of Canada Post (Aitken, *EJ*, October 17, 1987; A7).

Alberta labour also presented the federal government's move to introduce back-to-work legislation as an anti-democratic, repressive initiative. There was also a suggestion that in legislating postal workers back-to-work the federal government had followed the "horrible example of the anti-worker government of Alberta" (Ibid). In this case Aitken was referring to Alberta's Bill 11, which had ordered striking provincial nurses back-to-work.

The AFL also cited developments in the Lakeside Packers dispute to highlight flaws in the *LRA* and to support demands for reform. In November the United Food and Commercial Workers Union (UFCW) announced that it would cut strike pay to remaining strikers at Lakeside Packers. In 1987, of the 83 workers who had struck the plant in June 1984, only 16 men and women continued to report for picketing duty (*Alberta Report*, December 7, 1987; 32). Some had opted to cross picket lines and return to work, while others had sought other employment. Seeing little to entice the employer to resume negotiations, the UFCW voted to cut off funds instead of "wasting money" on what it saw as a lost cause (*EJ*, November, 19, 1987: A11). Werlin blamed the loss of the strike on the *LRA* because it had not prohibited Lakeside from continuing operations with a replacement labour force. Werlin was not alone in this view. An *Edmonton Journal* editorial claimed that Bill 60 was not much better because it provided no incentives for employers to settle agreements with unions.

> If employees don't reach a deal, employers will be able to lock them out for as long as two years — and hire replacement workers for less than union wages (November 21, 1987: A4).

Lakeside highlighted the need for reforms that would "restore fairness" to labour relations (*EJ*, November 21, 1987; A4). Bill 60 was not seen as the panacea that the government claimed it to be.

G. Conclusion

In this chapter I have examined how employers and organized labour interpreted Bill 60. More specifically I have focused on how these constituencies were able to identify "problem" clauses in the legislation. I argue that such provisions take on meaning in a number of narrative accounts, threads of which were present in earlier stages of the review initiative. A number of clauses were problematized in narratives on rights. Employers and employer associations, for instance, maintained that many of the revised employment standards provisions were unfair because they made certain guarantees to individuals that encroached on management rights. Labour also took issue with provisions that had not been included in Part II of the Bill (on employment standards), such as provisions for pay equity, and thus the government's failure to adequately protect workers rights. Labour and employers also appealed to narratives on rights to attack specific clauses in Part III of Bill 60 on collective labour relations. Labour claimed that the legislation did not support workers' right to strike. It criticized changes that limited the duration of the strike, and the omission of a ban on replacements and 25 hour lockouts which it had demanded during the Gainers dispute. Employers also put forward the idea of management rights in attacking the proposed bridging arrangements.

Narratives on the role of government and third parties were also used to identify problem clauses. Interestingly labour and employers used concerns about government interference to question the same provisions. Both, for instance, identified the communication and education provisions as intrusive and expressed concern about the new restrictions on the exchange of bargaining proposals and the procedures for enhanced mediation. Narratives on economic competitiveness were salient features of employer submissions on Bill 60. Employers contended that the revisions in employment standards were not consistent with its demands for labour law that would promote competitiveness and employment flexibility. In their briefs on Bill 60 employers also dealt more explicitly with the matter of employment costs. Employers predicted that labour standards would drive up their costs substantially and undermine their competitive position. New narratives included an appeal by employers to narratives on free trade. Free trade was used to underscore the importance of reduced costs and greater employment flexibility.

While employers highlighted problems in Bill 60 in economic terms, labour expressed concern with the bill's capacity to further undermine the status of trade unions and collective bargaining. Labour saw the communication and education provisions and a number of other changes as a way to circumvent union authority and to exclude unions. The AFL also claimed that the failure to provide positive statements on collective bargaining in the preamble was further evidence of the legislation's anti-union bias.

Labour did not mount a major lobbying campaign against Bill 60 though the AFL endeavoured to use the two postal disputes and the UFCW's abandonment of the strike at Lakeside Packers to generate support for labour law reform. Such events, however, did not rouse the same kind of public interest in labour law that had been generated during the Gainers strike. The Lakeside strike was not in a major urban centre and had drawn little attention. The postal strikes proved unpopular with the Canadian public and lacked many of the elements that had made the 1986 strike at Gainers such a dramatic event. There was not the same level of picket-line violence, or police response. Nor was there an identifiable and unpopular antagonist in the dispute like Peter Pocklington to swing public sympathy in the direction of striking workers and their cause. This was especially important given that Alberta was not known for its support of labour and labour issues. In this context labour's claims about the urgency of a ban on replacement workers, the 25 hour lockout and spin-offs lacked the same political and moral weight. This meant that government could pursue a course of action that was not constrained by labour's demands, at least not in the way that it had during the Gainers dispute. While the Tories could avoid responding to the problems that labour had identified, employer demands were another matter.

Employers had mounted a concerted lobbying effort against Bill 60. The business community made clear that it opposed the government's increased interventions and attempts to reconfigure labour-management relations. Drawing on narratives on competitiveness and the concomitant call for a new approach to labour relations, the government had constructed an alternate rationale for the labour review in an attempt to shift debate away from Gainers, a rationale that employers had been able to support in earlier phases of the review initiative. The way that the Tories had translated these narratives into policy, however, was unacceptable to employers as their submissions document. Subsequent lobbying efforts were a reaction to what might be considered the relative autonomy of the state. Employers made clear how the Bill would encroach on management rights and had created a role for government that was too interventionist.

By the end of 1987 there was evidence the Tories were prepared to respond to employer's lobbying efforts. The Minister of Labour tried to reassure concerned employers about the philosophy that underpinned the Bill and claimed that the basic problem was one of misinterpretation: employers had read the new provisions in a way that had not been intended. As part of its effort to "clarify the intent" of Bill 60 the government drafted and disseminated copies of *Alberta Labour News* (Alberta, 1987b: 2). In addition to highlighting problem areas in Bill 60, the document set out where the government planned to make changes so as to ensure that its intent would be made clear. By presenting legal change as a way of clearing up "misconceptions" that had been created by "confusion in wording" (Ibid), the government hoped not to appear to be ceding to the demands of business. In this way the government could amend the law and respond to employers concerns. In chapter seven I will examine the extent to which narrative interpretations influenced the outcome of the changes provided in Bills 21 and 22.

VII. Narrative and the Final Phases of the Alberta Labour Law Review

A. Introduction

New labour legislation debuted in the Alberta legislature on April, 15, 1988. Unlike Bill 60, provisions on labour standards and collective bargaining were presented in two separate Bills—the *Employment Standards Code* (Bill 21) and the *Labour Relations Code* respectively (Bill 22). In this chapter I propose a number of things. First I examine how the revisions presented in Bill 21 and 22 responded to narrative accounts of Bill 60. I also examine how accounts of an illegal strike by Alberta nurses in early 1988 revived debate on the meaning of Alberta's labour law and shaped revisions that appeared in Bill 22. In the remainder of the Chapter I identify narratives that were constructed during political debate on Bill 22, in opposition to and in defense of its provisions. To assess the effect of the Opposition's interpretations of Bill 22, I compare the version presented at first reading with that at third reading following the introduction of government amendments. A comparison of the two versions of Bill 22 provides a way of establishing which narratives were successful in shaping the final Bill and which ones were suppressed.

B. Narrative and Bill 21

1. Narratives on Rights and the Role of Government

Various provisions in Part 1 of Bill 60 on 'Communication and Education' were identified as problematic in both employer and labour submissions. Both constituencies saw the government's efforts to foster cooperation and consultation as unnecessarily increasing government involvement and as an infringement on management and labour rights. A voluntarist solution was clearly preferable. The AFL, employers and their associations also appealed to narratives on rights to oppose provisions in Part 1. Employers believed that they had encroached on management rights, while labour claimed that they interfered with a union's exclusive right to represent its members.

The communication and education provisions in Bills 21 retained many of the provisions from Bill 60 (see Table 7. 1). There were a number of changes, however. The provision calling for multi-sector advisory councils was dropped because this was intended to provide advice on labour relations, which was now dealt with in Bill 22. Section 7(1) retained the provision allowing for the Lieutenant Governor in Council to establish structures and procedures for communication.[1] Such changes, however, would only be established if they served the "public interest", a condition that had not been included in Bill 60. Part 1 of Bill 21 included an additional provision requiring employers to make available copies of bulletins and notices that the Minister or ALRB "requires him to make available".[2] Labour and employer lobbying efforts to force changes in Part I of Bill 60 that had been identified as problematic in narratives on government intervention were not very successful in Bill 21. The Bill retained provisions that reflected the government's vision of a new, more consensual labour relations. The appearance of these provisions, moreover, reflects the relative autonomy of the state in drafting legislation.

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[1] The subsections of s. 7 made a number of references to trade unions and bargaining units. Section 7(1) (b) stated that the Minister could "direct the employees of a single employer, any trade union that represents those employees, and the employer of those employees to participate in structures or procedures" established by the Lieutenant Governor in Council. This is curious given that the legislation was intended for the non-union employers and that these provisions had been dropped from Bill 22, the labour relations statute.

[2] Part 1 also included a provision dealing with termination notices in cases of economic change. In Bill 60 this had been set out in s. 62

Table 7.1 A Comparison of the Communication and Education Provisions in Bills 60, 21 and 22.

Provision	Bill 60	Bill 21	Bill 22
Powers of the Minister: - collect and disseminate info.	Yes	Yes	Yes
- require an employer to make available notices to his employees	No	Yes	Yes
Multi-sector advisory council	Yes	Yes	Yes
Round-table conference	Yes	No	Yes "shall from time to time" (s. 7)
Lieutenant Governor may make regulations	Yes	Yes, when in the "public interest" (s. 7)	No

The influence of narratives on government intervention and the infringement of management rights was more evident in other sections of Bill 21. In their submissions employers claimed that employment standard officers (ESO) had been delegated excessive powers to reinstate employees. Bill 21 dropped from the ESO's list of responsibilities the ability to reinstate workers, and made clear that this power was to be vested solely with the Director of Employment Standards.

Bill 21 did not respond to the AFL's claims that the employment standards were not fair standards and did not adequately protect workers' rights. Like Bill 60, Bill 21 did not address labour's demands for pay equity. Nor were any changes included that would extend the applicability of employment standards to excluded categories of workers (such as domestic workers). The Federation had expressed concern that Bill 60 had made no provision for increasing the minimum wage or for linking further wage increases to the cost-of-living. Bill 21 contained no new minimum wage provisions though several days after the Tories had introduced Bills 21 and 22, Labour Minister, Ian Reid announced that the rate would be increased by 70 cents to $4.50, effective September 1, 1988 (*EJ*, April 20, 1988: A1).

2. Narratives on the Economy

a. Costs, Flexibility and Competitiveness

In their submissions on Bill 60 employers and employer associations had responded to the revised employment standards in a number of negative accounts on the economy. There were claims that such changes would increase employment costs and/or reduce flexibility and, as a result, compromise business' efforts to remain competitive. In Bill 21 many of the 'problem' provisions were redrafted in ways that were consonant with employer demands (see Table 7.2). The Bill dropped references to "custom and practice" in the sections defining "general holiday" and "greater benefits". The Bill also reintroduced time off in lieu of overtime, which employers had claimed would keep wage costs in check and increase employment flexibility. By increasing the maximum hours of work per day from 10 (as set out in Bill 60) back to 12, Bill 21 had also responded to demands for greater flexibility in compressed work schedules.

In other instances Bill 21 went some way toward responding to employers' economic concerns by providing additional leeway in compliance.[3] The bill, for instance, did not drop s. 31(3) which required an employer to provide his/her employees a half hour rest period after every five consecutive hours of work. Instead s. 32(3) of Bill 21 stated that the break could be "paid or unpaid" and that employers were not obliged to provide such breaks in circumstances where it was "not reasonable." Employers had also complained that the requirement in Bill 60 that they provide the Minister four weeks' notice of their intent to terminate the employment of 50 or more employees (s. 62) was too inflexible. Bill 21 retained the provision, though it also included a subsection outlining three circumstances under which employers would not be required to provide such notice. The provision was not applicable where an employer had hired workers on a seasonal basis, where termination was the result of an "unforeseeable or unpreventable cause beyond the control of the employer" or if it was "unreasonable under the circumstances" to provide such notice.

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[3] Bill 21 did not change all employment standard provisions identified in employers' economic narratives on Bill 60. This includes the vacation pay provisions, where employers would be required to provide employees with two weeks vacation pay after one year of service and three weeks after five years, and the termination notice that employers were required to give to employees.

Table 7.2 Changes in Employment Provisions Defined as Problematic in Narratives on the Economy

Provision	***Employment Standards Act***	***Bill 60 Labour Code***	***Bill 21 Employment Standards Code***
Contains reference to "custom and practice": —Definition of General Holiday — Greater benefits	No No	Yes Yes	No No
Time off in lieu provisions	Yes	No	Yes
Maximum hours of work	12	10	12
Compressed work schedule	permits 3 by 12 hour shifts	permits 4 by 10 hour shifts	permits 3 by 12 hour shifts
Payment of Wages: No. of days after the pay period that wages due to employees	10 days	7 days	10 days
Mandated half hour rest period after 5 hours of work	No	Yes	Yes, but can be paid or unpaid
Termination for redundancy/economic change: employer to notify Minister.	No	Yes	Yes, but sets out circumstances where this stipulation is not to applied
Annual vacation periods	Either an unbroken two week period or at request of employee in 2 periods of 1 week each	To be granted in periods of not less than 1 week	Either 1 unbroken period or, at request of employee, may be granted in periods of not less than 1 day

C. Narrative and Bill 22

1. Narratives on the Role of Government

The government claimed that the changes in collective bargaining procedures proposed in Bill 60 would avoid labour conflict. Many of these, however, were interpreted by both employers and the AFL as invasive and too interventionist. In Bill 60 the government had proposed a more structured bargaining process that it claimed would improve the bargaining process and help the parties avoid impasse. It was the contention of employers and the AFL, however, that provisions such as Bill 60's section 175(1)(b), which called for the parties to "exchange detailed proposals in writing" at the commencement of collective bargaining, would complicate the process and create unnecessary conflict. Bill 22 did not drop the requirement for the exchange of written proposals, though it afforded the parties greater flexibility. The parties were only expected to exchange proposals within 15 days of their first meeting and there was no need for the proposals to be "detailed" and no restrictions on adding or changing proposals (see Table 7.3).

Table 7. 3 Changes in Provisions Identified in Narratives on Government Intervention

Provision	***Bill 60***	***Bill 22***
Notice to commence collective bargaining	Not more than 120 and not less than 60 days preceding the expiry of the collective agreement (s. 172(2)).	Not more than 120 and not less than 60 days preceding the expiry of the collective agreement (s. 56(2)).

Commencement of collective bargaining	Not less than 10 days and not more than 30 days after notice is served the parties shall: • meet and commence collective bargaining • exchange "detailed" proprosals • make every reasonable effort to enter into collective bargaining (s. 175).	Not more than 30 days after after notice is served the parties shall: • meet and commence collective bargaining • make every reasonable effort to enter into a collective agreement (s. 57 (1)). Within 15 days of the first time they meet the parties shall exchange bargaining proposals (no reference to "detailed" proposals) (s. 57(2)). No comparable provisions
Restrictions on exchange of bargaining proposals	No additional proposals shall be added unless: • they relate to matters that were in dispute at the time that the proposals were exchanged • the other party consents (s. 175(2)).	

Bill 22 also appeared to reflect concerns about excessive government intervention in the dispute resolution procedures.[4] Bill 60 had provided for a two stage mediation process. The parties could request a mediator or the Minister could appoint a mediator if, after 60 days from the time that bargaining proposals were exchanged, no agreement had been obtained. The mediator was then at liberty to recommend that a mediation board be appointed (see Table 7.4). At this point the Minister could "direct the parties to continue collective bargaining and may prescribe the conditions under which collective bargaining is to take place" (Bill 60, s. 179(a)), a provision that employers had identified as too interventionist and that was subsequently dropped in Bill 22. Alternately, the Minister could appoint a mediation board. Bill 22 simplified the process so that enhanced mediation no longer provided for the appointment of a mediation board. Instead formal mediation was to be a single stage process.

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[4] Bills 60 and 22 both retained provisions that allowed the Minister to appoint a Disputes Investigation Board (DIB). Under existing legislation, the *LRA*, the appointment of a DIB before a strike/lockout meant that the parties could not undertake industrial action until the DIB process was complete. The DIB had no effect on the strike/lockout where the parties had already commenced industrial action. Bill 60 changed this so that the establishment of a DIB had no effect on a strike or lockout or its continuation (s. 219(3)). Bill 22, however, adopted the provisions set out in the *LRA*.

Table 7.4 Mediation Provisions in Bill 60 and Bill 22

Provision	***Bill 60***	***Bill 22***
Informal Mediation	Yes. Anytime after notice to commence CB is served Either party may apply (s. 177(1)).	Yes. Anytime after notice to commence CB is served Either party may apply (s. 61).
Enhanced Mediation		
Appointment of a mediator		
• when	If no collective agreement, 60 days from date of exchange of bargaining proposals (s. 178).	Anytime after notice to commence collective bargaining is served (s. 62).
• at request of	either party or the Minister	either party or the Minister
• duties	within 14 days of appointment of mediator: -recommend terms of settlement, or -recommend mediation board, or -indicate that does not intend to make recommendations (s. 178(5)).	within 14 days of appointment of mediator or after a vote on offer (which is possible anytime after exchange of proposals). -recommend terms for settlement, or — -indicate to the parties that he does not intend to make recommendations (s. 62(5)(c) and (d)).
Powers of Minister	-may direct the parties to continue bargaining and may prescribe conditions under which CB is to take place -may direct parties to appoint a mediation board	— —
Provision for mediation board.	Yes if recommended by the mediator and directed by the Minister.	No
• Duties of the mediation board	within 20 days of its establishment shall make recommendations and send to parties and the minister	—
Vote on recommendations of mediator/mediation board	If, within 10 days of being served with recommendations, a party has not accepted the mediators/mediation board's recommendations, the Board shall supervise a vote (s. 181(2)).	If one party accepts the recommendations of a mediator within the time frame fixed by the mediator the party may request the Board to conduct a vote on the acceptance of the recommendations by the other party (s. 63(3)).
Cooling-off period	14 days (s. 184(2))	14 days (s. 62(6))

In their submissions on Bill 60 employers and labour had focused on changes that affected the involvement of the ALRB and the courts in labour relations. Both constituencies had identified the new ALRB procedures (especially the provisions for an informal board) for handling disputes as problematic on the grounds that they would only add a new layer of complexity to the process, as well as complicate and delay matters. Bill 22 did alter the process, though the informal procedure remained an option for the Board. Bill 22 stated that the Chairman could in the interests of a settlement refer any issue before the Board to "panel consisting of 1 or more members of the Board" (s. 10(1)). The panel could issue reports on outstanding issues and what ought to be done to settle such matters (s. 10(2)(c)). The Board, on application by one of the parties to the dispute, was at liberty to "confirm a report...as a decision of the Board" (s. 10(3)).

Despite employer opposition, Bill 22 retained a provision in Bill 60[5] that allowed the Board to award costs where an application, complaint, and so forth was deemed to be "trivial, frivolous, vexatious or abusive" (Bill 22, s. 11(2)(i)). Bill 22 also retained the statements that limited access to the courts during a strike or lockout or for the purposes of restraining picketing, a revision that was opposed by employers. Bill 60 had also set out a number of conditions under which restrictions on seeking court action did not apply (e.g the likelihood of violence). Bill 22, however, dropped subsection "c" which stated that before a matter could be taken up in the courts the Board must already have issued an order which had been contravened. Under Bill 22 it appeared that the Board's role in deciding picketing and other strike related issues was significantly reduced (s.88). This was a revision that was consistent with employer demands.

2. Narratives on Rights

The influence and suppression of narratives on rights can be observed in a number of ways. Employers had argued against restrictions on replacement labour on the grounds that they would interfere with their right to continue business operations. In Bill 60 the government had taken steps to ban "professional strike breakers", but Bill 22 dropped this restriction. As a result there would be no statutory attempts to limit employer access to replacement labour. In their submissions on Bill 60, employers had also criticized the proposed bridging provision (in s. 242) whereby the provisions of *all* collective agreements would remain in effect until industrial action commenced. Employers contended that this interfered with their ability to unilaterally change the terms and conditions of employment. In Bill 22 employer interpretations of section 242 were suppressed and the bridging provision was retained.

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[5] S. 124(2)(h)).

The AFL interpreted Bill 60's certification provisions as a threat to its right to organize. The Federation predicted that the mandatory representation vote would engender a period of electioneering which would afford employers an opportunity to turn employee opinion against the union. Bill 22 provided no provision for automatic certification (i.e., without a vote) where labour could provide evidence of majority support with signed union cards. Instead Bill 22 retained the provision in Bill 60 requiring representation votes in all applications for union certification, a position that had been supported by employers in narratives on democratic rights (see Table 7.5).

Table 7.5 Changes in Certification Provisions

Legal Provision	***Labour Relations Act***	***Bill 60***	***Bill 22***
Permits Board to issue union certificate with union cards as evidence	Yes	No	No
Representation vote compulsory in all certification applications	No	Yes s.145(1)(d)	Yes s.32(1)(d)
Support required in a unit to file certification application with the ALRB	Majority s. 34(1)	40% s. 144(a)	40% s. 31(a)

The AFL had maintained that Bill 60 compromised free collective bargaining because it unduly restricted labour's rights to strike. Any provisions that delayed or withheld the strike were seen as objectionable. On these grounds the AFL opposed the provision that called for 14 day cooling-off period following mediation (see Table 7.6). There were also objections to section 186 which time-limited the effect of a strike vote to 90 days and which stated that no strike vote could be taken two years following the elapse of the 14 day cooling-off period. Labour's demands were met with limited success. Bill 22 extended the time-effectiveness of a strike/lockout vote from 90 to 120 days. The legislation, however, retained the mandatory cooling-off period as well as the restrictions on strike votes which limited the ability to strike to two years.

Table 7.6 Strike Vote Provisions in Bills 60 and 22

Provision	***Bill 60***	***Bill 22***
Strike vote can be taken	14 days after cooling-off period (s. 184(2)).	14 days after cooling-off period (s. 72(3)).
Vote effective for	90 days (s. 186(1))	120 days (s. 74(1))
Strike/lockout notice	72 hours (s.187(1)(a) and 187(2)(a))	72 hours (s. 75(1)(a) and 75(2)(a))
Limits on strike votes	No strike vote following expiry of two years from the elapse of the cooling-off period (s. 186(2)).	No strike vote following expiry of two years from the elapse of the cooling-off period (s.74(2)).
A dispute no longer exists	if a strike or lockout vote is prohibited because of the elapse of two years since the cooling off period (s. 186(3)).	if a strike or lockout vote is prohibited because of the elapse of two years since the cooling off period (s. 74(3)).

The AFL had also argued that restrictions on picketing undermined its ability to bargain and to mount strike action. Section 198 of Bill 60 was seen to have added unreasonable restrictions on both picketing and boycott activities. The picketing provisions were amended in Bill 22, though they did not conform to the AFL's demands. Instead Bill 22 stipulated that picketing would be limited to those individuals with a "direct interest" in the dispute.

Labour also claimed that Bill 60 had not adequately protected workers' rights to employment during a strike, a demand that can be traced to narratives on Gainers. As in Bill 60, Bill 22 stated that following the elapse of two years from the time that a strike or lockout had commenced an employee was entitled, "on request", to employment "in preference" to replacement workers (Bill 22, s. 87(1)). In response to employer charges that the provision was too ambiguous, Bill 22 also specified that such a request had to be made in writing within 14 days "of the date on which the employee learns that the strike or lockout ended", within 30 days of the end of the strike or lockout or "forthwith" if two years had elapsed since the strike/lockout (s. 87(2)). Bill 22 also retained the statement in Bill 60 which read:

> An employer shall, on request of any employee returning to work at the end of a strike or lockout, where there is *no collective agreement in place*, reinstate the employee in his former employment on *any terms that the employer and the employee may agree on* (Bill 22, s. 87(4) emphasis added).

It is an assumption of this statement that the parties will not always receive a collective agreement and that the employment relationship will revert to an individual employee-employer contract. This has important ramifications for union legitimacy, an issue to which I will now turn.

3. Narratives on Trade Union and Collective Bargaining Legitimacy

Union legitimacy was a salient theme in labour's response to the provisions that appeared in Bill 60. The AFL claimed that the measures proposed in Bill 60 were more anti-union than those contained in the *LRA*. The government did not respond to these concerns in Bill 22 (see Table 7.7). The AFL had made a case that the contents of the preamble to Bill 60, especially those pertaining to the competitive economy, reflected an anti-unionism. The same preamble, however, also preceded the text of Bill 22. Labour had argued that section 176, which allowed either party to apply to the ALRB to hold a vote on the acceptance or rejection of its latest offer (which was permissible any time after the parties had exchanged bargaining proposals), interfered in a union's exclusive ability to represent its members. Bill 22, however, retained this provision in section 66. Labour also claimed that Bill 60 did not ban 25 hour lockouts or prohibit the use of replacement labour, practices that enabled employers to circumvent collective bargaining. Bill 22 retained Bill 60's bridging provision whereby a collective agreement remained in effect until a strike or lockout (s. 127). Like Bill 60, Bill 22 also contained no general prohibition on replacement labour. Bill 22 also dropped Bill 60's ban on professional strikebreakers. The final legislation also made no provision for first contract arbitration or the compulsory dues check-off, measures that labour believed would facilitate union recognition and compensate labour for the obstacles that it faced in winning bargaining rights. Bill 22 also retained Bill 60's provisions that exempted workers from union membership on religious grounds.

Table 7.7 Provisions Identified in Narratives on the Legitimacy of Trade Unions and Collective Bargaining.

Provision	***LRA***	***Bill 60***	***Bill 22***
Preamble	No	Yes	Yes
Affirms collective bargaining	—	No	No
25 hour lockouts Bridging clauses	Parties may negotiate bridging clauses to continue effect of agreement while the parties bargain (s. 80).	Every agreement is deemed to contain a bridging clause until a strike-lockout (s.242)	Every agreement is deemed to contain a bridging clause until a strike-lockout or the right of the bargaining agent to represent employees is ended (s. 127)
First contract arbitration	No	No	No
Compulsory dues-check off	No	No	No
Religious objectors clause	No	Yes (s. 140)	Yes (s. 27)

4. Narratives on the Economy

Traces of narratives on the economy, specifically competitiveness, are clearly evident in Bill 22. In its submission to the Minister on Bill 60 labour claimed that the reference to "competitive world wide market economy" in the preamble to the legislation was inappropriate. Bill 22 did not drop this statement but retained it along with the others that comprised the preamble to Bill 60. There are also clear traces of the government's attempts to link growth in competitiveness and the need for less adversarial and more co-operative labour relations. As in Bill 60, the third statement of the preamble to Bill 22 read:

> ...the employee-employer relationship *is based* on a *common interest* in the success of the employing organization, best recognized through *open and honest communication* between affected parties (emphasis added).

In this statement commonality of interest between the parties is treated as a "fact", rather than as something that should be achieved over time. The government's attempts to renegotiate labour relations were also evident in Part 1 of Bill 22 which contained provisions that were intended to facilitate communication and education. Bill 22 retained most of Bill 60's communication and education provisions (with the exception of the regulations that could be made by the Lieutenant Governor in Council[6]) including the clause authorizing the Minister to "convene a conference...for the purposes of developing a general understanding of Alberta's economic circumstances and those factors critical to continued economic growth" (Bill 22, s. 7). Though the government had amended the communication and education provisions in response to concerns about excessive government intervention (discussed earlier), Bill 22 continued to reflect the narratives on economic change and the need to promore consensual labour relations that had been advanced by the Tories and the LLRC throughout the review initiative.

Before moving on to the political debate on Bill 22, I will first provide a review of a number of labour relations developments events in Alberta in 1987 and 1988. I turn to these now because they are used by the Official Opposition to account for the appearance of a number of new clauses in Bill 22

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[6] These were included in s. 9 of Bill 60.

D. Labour Relations Events in Alberta

1. The Right to Organize and the case of Mariposa

During political debate on Bill 22, New Democrats linked changes in the Alberta Labour Relations Board's ability to automatically certify a bargaining agent in relation to developments in the Mariposa case. Set against the backdrop of the mass firing of Mariposa employees, the Board's authority to issue certificates was identified as vital in protecting the right to organize. In submissions to the LLRC the AFL had recommended that the government amend the *LRA* to:

> ...clearly direct the Board to provide automatic certification in a wider range of cases wherever sufficiently disruptive employer breach of S. 137[7] is found, even if the union has not yet demonstrated majority support (submission 57 to the LLRC: 39).

In its submission, the Federation outlined developments in the Mariposa case to illustrate the importance and urgency of its recommendation. The ALRB's response to the firing of 26 Mariposa employees in 1986 during a UFCW organizing drive was seen as grossly inadequate. The AFL claimed that the firings had stalled the union drive and had sent a clear message to other Mariposa employees about unionisation, damage that could not be remedied by reinstating the fired employees, as the Board had ordered. For the AFL, Mariposa was exemplary of the kind of situation in which the Board should have used its discretionary remedial power to grant a union certificate to the UFCW local. Following additional unfair labour practice complaints against Mariposa, the Board granted four retail outlets automatic bargaining rights. Such a measure had been invoked by the Board only once before (*EJ*, February 13, 1987: A1). The order was issued in mid-February, 1987, several days before the LLRC released its *Final Report*. The *Report*, however, had contained no recommendations that addressed the Board's ability to issue union certificates and in Bill 60 the Board retained this power. The amendments proposed in Bill 22 meant that the Board could not exercise this power if events at Mariposa were to be repeated in the future.

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[7] Section 137 of the *LRA* set out prohibited practices for employers and employer organizations.

2. The 1988 Alberta Nurses' Strike

In its submission to the LLRC and to the Minister on Bill 60, the AFL had tried to refocus debate on those provisions of the *LRA* that had been introduced by Bill 44 in 1983. Bill 44 introduced changes that barred hospital workers from taking industrial action and which submitted any outstanding disputes in this sector to compulsory interest arbitration. In its submissions the AFL had condemned Bill 44's strike restrictions and had demanded that the government restore this right. Despite these efforts, Bill 44's provisions had remained tangential to debate. In early, 1988, however, a dispute by Alberta nurses made labour law—specifically the strike-ban and the mandatory system of interest arbitration—a political issue.

In the final months of 1987 the Minister of Labour indicated that he would be introducing new legislation some time during the Spring sitting of the Legislature. Before the Minister could do so, however, the government was forced to contend with an 19-day long illegal strike by 11,000 Alberta nurses represented by the United Nurses' of Alberta (UNA). Contract negotiations between the UNA[8] and the Alberta Hospitals' Association (AHA) commenced in the autumn of 1987 but the talks soon stalled, largely over wages and benefits[9]. By year's end, talks between the two parties had yet to yield a settlement and the UNA had begun to issue warnings about a possible walk out (*EJ*, December 20, 1987; A3). Nurses, however, were prohibited from taking strike action by s. 117.1 of the *Labour Relations Act (LRA)* which prohibited strike action by workers defined as employees under the Alberta *Hospitals Act*. The ban on hospital workers had been introduced in 1983 by Bill 44, legislation which had been drafted by the Tories following a number of hospital strikes. In place of the strike, the Bill had provided for the resolution of hospital disputes through compulsory interest arbitration. In issuing their awards, arbitrators were expected to consider government fiscal policy (see chapter three for additional details on Bill 44).

In early January, 1988 with wage issues still in dispute and no contract in sight, an illegal strike seemed likely. Approximately 300 nurses representing the UNA membership voted overwhelmingly to hold a strike vote on January 22. AHA President, Don Macgregor said that in threatening to strike the nurses had placed themselves "above the law" (*EJ*, January 17, 1988; A1). The AHA filed complaint with the Alberta Labour

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[8] For more background on the UNA see Coulter (1993).

[9] The AHA was seeking a three per cent wage cut, while the UNA was demanding an hourly increase of $2.30 and improvement in vacations and other benefits (*EJ*, November 22, 1987; A1; *EJ*, December 20, 1987;A3).

Relations Board (ALRB) charging that a strike vote constituted a threat to strike and was therefore in violation of the *LRA*[10]. The UNA perceived the AHA's attempts to prevent the strike vote as "gross interference" (*EJ*, January 16, 1988; A1). The strike would go ahead, as one UNA official noted, since "only our members are going to tell us what to do" (*EJ*, January 17, 1987; A1). In the early morning hours of January 22 the ALRB ruled that the vote was illegal, but the Union held its poll in spite of the Board's decision and the nurses voted 75 per cent in favour of strike action (*EJ*, January 23, 1988; A1). The strike commenced on January 25 and continued for 18 more days. Shortly after the illegal strike began the government filed criminal and civil contempt complaints and the UNA was subsequently ordered to pay substantial fines for its defiance of the law. On February 11, the AHA and the UNA agreed to a tentative settlement.

3. Narratives on the Nurses' strike

a. The flawed law

The 1988 Alberta nurses' strike, like the 1986 dispute at Gainers, took on meaning in competing narrative accounts. The state of Alberta labour law figured very prominently in explanations of the strike. From the standpoint of the UNA, the 1983 amendments to the *LRA* had been invalid from their inception. The union had contested the legitimacy of the no strike policy and had made clear that it would refuse to participate in compulsory arbitration proceedings where an award would be contingent on government fiscal policy (*EJ*, January 19, 1988: B1). In 1988 the UNA's position on the *LRA* was unchanged. For many observers the provisions of Alberta's *LRA* governing disputes in Alberta Hospitals were unfair and unreasonable. As such the law came to be treated as a primary catalyst in the dispute. For organized labour, Alberta labour law was unfair to nurses and strike action was presented as the only way that the UNA could obtain a reasonable settlement. An AUPE official commented that: "Sometimes people, despite the law, are forced to take action to gain justice at the bargaining table" (*EJ*, February 2, 1988: B2). Not all observers offered the same kind of unqualified support for the nurses, though many also assumed that the *LRA* was a "bad" law. This assumption was significant because it created considerable sympathy for the striking nurses. The *Edmonton Journal* wrote: "Economic concerns are no justification for breaking the law, but one can understand the nurses' position" (*EJ*, January 26, 1988; A4). The nurses' action was not interpreted as reckless, but rather as a rational response given the circumstances. It was a measure of last resort.

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[10] The UNA had taken two strike votes in 1986, though the AHA had not responded in the same manner (*EJ*, January 19, 1988: B1).

b. Rights and the Nurses' Strike as a Morality Tale

One representation of the dispute adopted arguments that had been used by New Democrats (NDs) to discredit Bill 44 in 1983. ND Leader, Grant Notley and Ray Martin issued predictions that the withdrawal of the right to strike would provoke industrial unrest. In 1988, ND Leader, Ray Martin insisted that the government had been forewarned of the consequences of imposing the strike ban and that the unrest in Alberta's health sector was the culmination of the government's failure to do the right thing in 1983.

> It was a bad law, and unfair law and Grant Notley and I both predicted that people were going to react to it in this way...You can't take people's rights away and enact unfair laws and expect them not to react (*EJ*, January 24, 1988: A1).

Other observers shared Martin's assessment noting that the law was inappropriate and had created more difficulties than it could ever have expected to resolve. Referring to the changes introduced in Bill 44 an Edmonton business editorialist wrote that it was his hope that:

> the UNA strike...serve[s] as a lesson to the Alberta government that fundamental problems cannot be solved by cosmetic legal amendments that merely place a lid on a pressure cooker. Whatever happens in the UNA strike...I have to hope that all sides can learn...that when you impose arbitrary solutions on fundamental problems, you set the stage for eventual chaos (*EJ*, February 2, 1988; F1).

Others saw the government as the victim of its own legislation. Legal strike action, it was suggested, would have afforded the nurses an outlet to vent their frustrations. The government could then have forced an end to the strike through back-to-work measures. As it stood, the government was seen to be in a difficult, "no-win situation" (*EJ*, January 26, 1988; A4). Failure to react to the illegal strike, an Edmonton Journal editorial contended, was to concede that the *LRA* was indeed flawed. Others drew attention to the gender dimensions of the dispute. Since the strikers were mostly women there were predictions that by sending in the police to enforce the no-strike law the government would have been perceived as acting in a "heavy-handed" fashion. In pursuing such a course of action the government risked tipping the scales of public sympathy ever further in favour of the nurses (Ibid).

For many commentators, the chief problem underlying the dispute was the government's decision to remove hospital workers' right to strike without providing them a satisfactory method to resolve disputes. Linking awards of provincial arbitrators to government fiscal policy was seen as unfair as having made a "sham" of collective bargaining (*EJ*, January 20, 1988; A6). The UNA's position was that the government was going to use the provision as a "convenient way" for the government to control nurses' wages (*EJ*, January 7, 1988: B1; *EJ*, January 28, 1988: B1). Understandings of the strike were also linked to developments in provincial spending policy. The government was seen to be using the rules governing arbitration awards as a vehicle to impose cut backs in funding to the hospital sector[11] (Martin in *EJ*, February 3, 1988). Liberal Leader, Nick Taylor claimed that: "The government is balancing Medicare books on the backs of nurses. I can't encourage anyone to break the law...but the law is an ass" (*EJ*, January 24, 1988: A1). Others declared that the law was a means of imposing a form of "wage and price controls" (Rod Ziegler, *EJ*, February 2, 1988; F1). The government was seen to be taking advantage of unfair legislation that it had supported in 1983. For critics, then, responsibility for the strike did not rest with the nurses alone, but extended to the government and its flawed legislation (*EJ*, January 20, 1988: A6; *EJ*, January 26, 1988: A4).

Two basic demands for legal change flowed from the 1988 nurses' dispute. For the UNA and organized labour in general, the government needed to restore the nurses' full collective bargaining rights: the right to strike. For others, the real concern was that the government provide an alternate method to settle hospital disputes that was not "rigged" but that would be fair and equitable to employees (e.g., see *EJ*, January 26, 1988: A4). Government officials tried to contest accounts of the dispute which placed blame on the government and the *LRA*. As with Gainers, there were efforts to isolate the dispute from the *LRA* and to shift responsibility for the events to the parties involved. Premier Getty denied that the dispute was a health funding matter, and insisted that it was really a matter "between management and labour" (*EJ*, January 29, 1988: A1). In other statements Getty tried to distance his government from Bill 44. Asked to speculate on whether the removal of the right to strike had caused the nurses dispute, said Getty: "I wasn't here at the time...It's difficult for me to speculate" (*EJ*, January 29, 1988; A1).

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[11] Grants to hospitals had only been increased by 1.5 per cent, which meant that there would have to be limits on wage increases (*EJ*, January 20, 1988: A6).

c. *Narratives on the Public Interest, Law and Order and the Rule of Law*

The government also came to the defense of Bill 44 in arguments about third party, public interest in the continued operation of the health care system. Acting Hospitals' Minister, Rick Orman maintained that in passing Bill 44 the government had acted appropriately given the delays that were involved in legislating an end to legal strikes.

> The reason that we have this type of legislation, and moved to it, was to avoid a situation where we had to go to back-to-work legislation, because by the time you do that you lose valuable time when you're talking about individual health care (*EJ*, January 24, 1988: A1).

Government officials appealed for law and order and the rule of law, an approach which had been employed in an effort to diffuse the 1986 crisis at Gainers. Premier Getty noted: "I guess there are laws that not all of us particularly like...Alberta's laws will not be made in the streets; they will be made in the legislature" (*EJ*, January 29, 1988; A1). This utterance was, almost word for word, the appeal that the Premier had issued in 1986 in response to Gainers. The government's response to demands for legal change also mirrored those it had issued two years earlier. In the days leading up to the nurses' illegal strike deadline, Labour Minister, Ian Reid, indicated that there was a possibility that he would review the contentious sections of the Labour *Relations Act* (*EJ*, January 24, 1988). The Minister was also careful to qualify this statement by noting that such an initiative would not be undertaken until the dispute was resolved.

4. The Nurses' Strike and Bill 22

The influence of the 1988 Alberta nurses' strike can be observed in a number of provisions in Bill 22. The legislation proposed changes in the compulsory interest arbitration provisions, an area of the *LRA* that had remained tangential to debate on Alberta labour in 1986 and 1987, but that had been politicized during the nurses' dispute. The *LRA*, as amended by Bill 44 in 1983, stated that a compulsory arbitration board was to give consideration to a number of factors in making its award, among them "any fiscal policies that may be declared from time to time by the

Provincial Treasurer" (s. 117.8(iii)). In Bill 22, however, arbitrators were no longer obliged to issue awards with a mind to provincial fiscal policy. Instead they would only be required to consider the prevailing "general economic conditions" (s. 98(a)(iii)).

The nurses' dispute had also raised questions about the fairness of the strike-ban in the hospital sector, though Bill 22 did not return to nurses' the right to strike. Instead the Bill proposed a number of changes affecting the government's ability to respond to illegal strikes. Both the LRA, as amended by Bill 44, and Bill 60 permitted employers to suspend the dues check-off in cases where workers had gone out on strike illegally. In both statutes these provisions were set out in sections dealing with compulsory arbitration. In Bill 22 the dues check off provisions, in an amended form[12], were set out in division[13] 19 entitled "Measures During Illegal Strike or Illegal Lockout". Included under division 19 was a contentious provision which vested the Lieutenant Governor-in-Council with the authority "to direct the [Alberta Labour Relations] Board to revoke the certification of a trade union that causes or participates in an illegal strike" (s. 113(1)). Revocation was to serve as a deterrent to illegal strike action in the future.

E. Understanding the Revised Version of Bill 22

In the second part of this chapter I turn to legislative debate on Bill 22. My aim is not only to set out those aspects of the Bill that were identified by the Opposition as problematic, but also to show how New Democrats arrived at these views and the proposals for change that they supported. As I shall soon show political debate on Bill 22 in 1988 had a much different focus than debate on the *LRA* and Opposition Bills to amend the LRA. In 1988 New Democrats were much less concerned with the 1986 Gainers strike and the agenda for legal change that the dispute had supported (i.e., the ban on replacement labour, etc.). Narratives on Gainers were still evident in debate, but much less prominent. Instead much of the political discourse was centred on the proposed picketing provisions in Bill

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[12] The division adapted earlier provisions pertaining to suspension of the dues check-off. There was an important change in language, that the Official Opposition and others found objectionable. Section 111(1) of the Bill proposed that the Board "may direct the employer to suspend the deduction and remittance of union dues". Under the existing legislation (i.e., the LRA), the board was limited to an adjudicative role. Where an employer had served notice to a union of his/her intent to suspend the collection of union dues during what was seen as an illegal walkout, the bargaining agent had 72 hours in which to appeal the notice to the ALRB. The Board was then required to rule whether a strike had occurred, a decision which would either support or undermine the legitimacy of the employer's suspension notice. In Bill 22, the Board's role became more proactive; it could direct employers to suspend the deduction of dues of its own accord.

[13] This section was entitled "Compulsory Arbitration" in the LRA (Ch. L-1.1) and "Compulsory Interest Arbitration" in Bill 60.

22's section 81, which I have contended was based on a view of Gainers that attributed the strike violence to outside troublemakers. In their opposition to section 81, New Democrats did draw links to Gainers, though these were by far overshadowed by broader narratives on democratic rights and the provision's constitutionality. Similar arguments were made against the government's new powers under section 113 to decertify bargaining units. New Democrats also attacked Bill 22's certification provisions by portraying them as an instance of Americanisation, and thereby adopting one of the key arguments in anti-free trade narratives.

1. About the Legislative Progress of Bill 22

Before examining the narratives that the New Democrats' invoked to press the government for revisions to Bill 22, it is helpful to review the legislative progress of the Bill. Throughout debate on Bill 22, the Opposition tried on various occasions to delay the Bill. During debate on second reading ND Leader, Ray Martin introduced an amendment that would hold back the Bill until the Legislature was certain that all its provisions were consonant with the *Canadian Charter of Rights and Freedoms* and with various conventions of the International Labour Organisation (ILO) to which Canada was a signatory.[14] A subamendment also proposed deferring second reading until the Alberta Court of Appeal had decided the constitutionality of its provision. Despite these efforts the Tories ultimately had the power to control the progress of the legislation. The government reacted to the ND amendments and sub-amendments by restricting the time available for debate, a procedure known as closure. Subsequently the Opposition's efforts to hold back the Bill failed and Bill 22 progressed to the Committee of the Whole where all parties were free to introduce amendments. During this stage the official Opposition introduced 55 amendments. Again the government invoked closure to cut off debate on the ND amendments. A revised Bill containing government amendments then advanced to third reading where the ND's tried to refer the Bill back to the Committee stage of the process. The effort failed and the government again invoked closure to end debate. Bills 22 and 21 received Royal Assent on July 6. Bill 22 was proclaimed on November, 28, 1988, concluding a more than two-year long review process.

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[14]. This was introduced as a subamendment. (see *Alberta Hansard* June 13, 1988: 1694).

2. Narratives on Rights

a. Labour's Rights

New Democrats began their attack on Bill 22's picketing provision before debate on the Bill at second reading. Under the *LRA* striking/locked out workers as well as those individuals "authorized by the trade union" were permitted to picket (s. 114(1)). At Gainers it was permissible for members of other unions, labour federations and private citizens to show their support for the UFCW local. Bill 60, however, proposed restricting picket line attendance to specific trade union members. These restrictions were reintroduced in Bill 22, albeit in an amended format. Section 81(1) stated that:

> During a strike or lockout...anyone with a *direct interest in the dispute* may, at the striking or locked out employees' place of employment and without acts that are otherwise unlawful, *peacefully*[15] persuade or endeavour to persuade anyone not to
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> (a) enter the employer's place of business, operation or employment,
> (b) deal in or handle the products of the employer, or
> (c) do business with the employer (emphasis mine).

Individuals who had a "direct interest" in the dispute were defined as those members of the trade union involved in the dispute at its various levels. Members of other trade unions, labour federations and private citizens were excluded from this definition and apparently were barred from support picketing activities.

For members of the Opposition banning strike supporters from the picket lines was a misguided attempt to pre-empt the kind of confrontations that had been witnessed at Gainers. Section 81 was also expected to increase the likelihood of strike violence. As one New Democrat explained, Bill 22:

> does a lot more than raise eyebrows: it raises temperatures and raises tempers, and if it is passed in its present state we are going to see strike after strike that end in the kind of violence we saw in northeast Edmonton not long ago...This Bill as it stands now...is a guarantee, is almost a blueprint to bring about violence on the picket line, to raise people's anger to the point where they just say. "This is enough; I won't put up

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[15] This adjective was also a new feature of Bill 22.

> with any more." Even under our old laws we had that, but now we have it that much worse (Younie quoted in *AH*, June 10. 1988: 1647).

The NDs contended that the logic underpinning section 81 was erroneous since the "real" source of the confrontations was the employer's ability to use the 25 hour lockout and to replace striking workers—the same account that the Opposition and others had offered two years earlier. Since neither of these matters had been addressed in Bill 22, the NDs concluded that the legislation would drag out disputes and retain the potential for conflict.[16]

In an effort to discredit section 81, the Opposition tried to link the new picketing restrictions to a key figure in the Gainers dispute: Gainers' owner, Peter Pocklington. The Opposition charged that the provisions were "going to back the employer over the employees in ... a dispute even before any trouble is caused" (McEachern, *AH*, June 7, 1988: 1568). The alleged pro-employer nature of the section led to speculation that the restrictions had been written to satisfy Pocklington. The Opposition claimed that section 81 was evidence of Pocklington's influence over the provincial Conservative government. Section 81 had become known in some circles as "Pocklington's Plum" (Gibeault quoted in *AH*, June 7, 1988; 1567).

> When an individual, as the owner of Gainers, can have the influence they had with the government during the strike and it seems to have carried over into proposed legislation... then I think we are in a sorry state of affairs when one person can dictate to government the type of legislation that is going to be imposed on the workers and the citizens of this country (Ewasiuk quoted in *AH*, June 10, 1988: 1642).

Pocklington was presented as a "friend" of the government and Section 81 was presented as further evidence of the government helping out its friends. In the month prior to the introduction of Bill 22 there had been speculation that a 67 million dollar aid package awarded to Gainers was a form of compensation to Pocklington for settling the 1986 dispute (*EJ*, March 4, 1988: A1).

Though the Opposition invoked narratives on Gainers to explain the changes in Section 81, much of its case against the provision focused on the impact and unworkability of the proposed restrictions. New Democrats maintained that in its heavy-handed response to the Gainers dispute the government had compromised the "fundamental rights" of 2.5 million Albertans (Barrett quoted in *AH*, June 7, 1988; 1560). In attempting to restrain these rights, the Opposition claimed that the law was undemocratic. There were claims that the government legislation was "repressive", "draconian" and "unjust" and that it had been drafted to "muzzle citizens" and "trample" on the rights of Albertans (*AH* June 7, 1988: 1558; *AH*, June 10, 1988: 1648). New Democrats drew parallels between Bill 22 and labour legislation in well-known authoritarian regimes. Bill 22 was described as "Chile-like" labour legislation and the kind of Bill that would not appear out of place in South Africa (June 10, 1988: 1648). Such comparisons were very much reminiscent of those employed by the Opposition and organized labour in their efforts to problematise the *LRA* during the 1986 Gainers dispute.

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[16] During debate on second reading of Bill 22 Ray Martin argued that if section 81 had been effective during the Gainers dispute it "would still be going on. Because of the reasons it was successful was they were able to have support picketing, they were able to have boycotts..." (*AH*, June 7, 1988: 1558).

New Democrats contended that Albertans would continue to engage in support picketing and boycotts regardless of the law. Implicit here was the view that picketing and boycotting were inalienable rights. Enforcement of section 81 was thus expected to make criminals out of ordinary citizens for engaging in activities that they believed were legitimate and rightful. As a consequence, the section was portrayed as:

> ...an absolutely perfect formula for making criminals out of a broad range of average Albertans, including priests, students, grocers, biochemists, grandmothers and farmers: all of whom were on the Gainers line or building the boycott in 1986...may be moved to say that fairness and justice demand that they picket or boycott. That's all this law is doing: making all those people potential criminals, just as it did with our nurses (Ray Martin, *AH*, June 7, 1988: 1558).

Enforcing legislation that was widely perceived as unjust was expected to prove impractical. This, the Opposition claimed, had been exemplified by the 1988 nurses' strike. Just as Bill 44 could not prevent unionized nurses from taking strike action, it also followed that section 81 could not keep Albertans away from picket lines or bar their participation in consumer boycotts. Enforcement, it was argued, would warrant extreme measures. New Democrats spoke of the necessity of "a Gestapo type policing", and the need for Orwellian-type "Thought Police" to enforce the consumer boycott (Ewasiuk quoted in *AH*, June 10, 1988: 1642; Younie quoted in *AH*, June 10, 1988: 1647).

The Labour Minister insisted that the Opposition had misread the intent of Section 81. Reid dismissed the Opposition's characterizations of section 81 as "nonsense and as extreme examples of "hyperbole" (*AH*, June 10, 1988, 1652). To undermine the Opposition's charges, Reid also focused on the steps that the government had taken to promote democracy in the province: through passage of the Alberta Bill of Rights and the *Individual Rights Protection Act* (IRPA). Such action was presented as evidence of the government's true motives, which were incompatible with those described by the Opposition. Though the government appealed to its prior legislative accomplishments to show that section 81 was not meant to infringe on basic rights, its readiness to cut off debate on Bills 21 and 22 only brought more charges that the government was acting in an anti-democratic fashion. The government used closure to push the two Bills through virtually every stage of the legislative process. By the end of the Spring, 1988 legislative sitting the procedure had been invoked a record seven times, six of which had been employed during debate on the two labour bills.[17] The NDs condemned the government's methods as autocratic in statements that spoke of the "tyranny of the majority" and the "jackboot of closure" (Martin quoted in *EJ*, June 24: A1). Government members justified the action, noting that plenty of time had been allowed for debate and that discussion had become repetitive (Young quoted in *EJ*, June 15, 1988: A1). The government also tried to normalize the practice. Premier Getty described closure as "much a part of democracy as question period" (*EJ*, June 24, 1988: A1). The Premier's account was much at odds with the record, however. Prior to 1988, the province had used the procedure only once—in 1981.[18] Governments in Alberta had little need to force an end to debate, since they had only to contend with fledgling oppositions. The political profile of the Legislature had been altered following the 1986 election, a change which appeared to have important consequences for the practice of law making.

3. Narratives on the Infringement of Constitutional Rights

The ND's also raised doubts about the legitimacy of the government's attempts to restrict picketing and consumer boycotts. The Opposition presented s. 81 as violating "fundamental freedoms"— the freedom of peaceful assembly and of association— that were protected by the *Canadian Charter of Human Rights and Freedoms*. Based on this position, the Opposition declared section 81 to be unconstitutional—a charge with considerable rhetorical weight. Initially the government defended Section 81. ND Leader, Ray Martin, had demanded that the government clarify whether the restrictions had been drafted erroneously, or whether they were an accurate reflection of the government's intent. Labour Minister, Ian Reid indicated that the legislation had been developed in conjunction with the Attorney General's department, and was an accurate reflection of the government's intent (*AH*, April 25, 1988: 618). Reid even cited the text of labour-related jurisprudence of the Supreme Court of Canada to defend the clause. The "subtle changes" between Bill 22 and the earlier draft (i.e., Bill 60), Reid noted, were based on a recent decision by the Supreme Court—the Retail Wholesale and Department Store Union, Local 580 et al. v. Dolphin Delivery Ltd. (1987)— on the matter of secondary picketing as a form of expression protected by the *Charter*. In his defense of Section 81 Reid cited two excerpts from the Court's ruling. The first suggested that all picketing activities were not protected.[19] It was the second excerpt, however, that appeared to provide the government with a rationale for limiting picketing to those directly involved in the dispute.

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[17] The government had used closure on May 26, 1988 to end debate on third reading of the Alberta Lotteries Act.

[18] Labour Minister, Les Young conceded that the practice was rare in Alberta, but contended that it had been used with some frequency federally and in other Canadian jurisdictions. Between 1913, when the practice first became permissible federally, and 1988 closure was invoked 21 times.

> A balance between the two competing concerns must be found. It is necessary in the general social interest that picketing be regulated and sometimes limited. It is reasonable to restrain picketing so that the conflict will not escalate beyond the actual parties (Decision quoted in *AH*, April 22, 1988: 596).

With this passage, the government suggested that section 81 constituted an attempt to protect the public interest. Opposition members, however, questioned the relevance of the quote, noting that the Court had been referring to secondary picketing, and not support picketing, which the government was proposing to restrict.

The government did not attempt to sustain this line of argument for long. At second reading the Minister refocused his comments, noting that the primary purpose of section 81 had been to provide workers with certain protections rather than to restrain picketing. Reid noted that:

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[19] It read:
There is always some element of expression in picketing. Action on the part of the picketers will always accompany the expression, but not every action on the part of the picketers will be such as to alter the nature of the whole transaction and remove it from Charter protection for freedom of expression. That freedom, of course, would not extend to protect threats of violence or acts of violence. It would not protect the destruction of property, or assaults, or other clearly unlawful conduct (cited in *AH*, April 22, 1988: 596).

> ...there has been considerable apprehension about the intent of the government in section 81...Without getting into the details of section 81, the concept is of giving immunity from the normal civil action for those who are directly involved in a dispute to picket at their place of employment and to peacefully try and deter people from entering the worksite or from doing business with the employer. Obviously, that immunity cannot be made too general, and indeed should not be. On the other hand, it is equally impossible to perceive that the government would intend to apply any restriction on the normal freedoms and rights that go with the common-law concept and the unwritten constitution of the country, never mind the Charter of Rights (Reid quoted in June 7, 1988: 1555).

This line of argumentation suggested that the government was not guilty of taking away certain basic rights, but in failing to offer sufficient protection from civil action. At second reading the government indicated that change was necessary not because the legislation was unconstitutional, as the Opposition had charged, but because there was "some misunderstanding" about its true intent (Reid quoted in *AH*, June 7, 1988: 1555). This approach allowed the government to amend the provision without conceding that the Opposition's account was accurate. In the Official Opposition's view, however, the government's announcement flowed from a realization that the Opposition's was the more accurate.

During Committee stage of debate on Bill 22 the government introduced a package of amendments to Bill 22 including the changes to Section 81 promised by the Minister. The amendments to Section 81, Reid indicated, had been drafted in consultation with constitutional lawyers and were now "responsive to the requirements of the Charter" (*AH*, June 21, 1988: 1915). The contentious reference to "direct interest in the dispute" that the Opposition claimed restricted picketing and boycott[20] activities was dropped and section 82 (1) of the revised Bill stated that:

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[20] The revised Bill made no attempts to restrict participation in consumer boycotts. Reid stated that: "The intention of the government in Bills 60 and 22 was to continue the traditional restrictions on picketing and the prohibition on secondary picketing, but in no way was there any intention of affecting the ability of non involved parties to boycott " (*AH*, June 21, 1988: 1915).

> ...during a strike or lockout that is permitted under this Act *anyone* may, at the striking or locked-out employees' place of employment and not elsewhere[21], in connection with any labour relations dispute or difference and without acts otherwise unlawful, peacefully engage in picketing...

The revised clause reflected the view that Albertans could not be arbitrarily denied access to picket lines. "Anyone" could engage in peaceful picketing at the striking employees' place of employment, a revision that was viewed positively by members of the Opposition. Subsequent clauses, however, qualified this general statement. At the request of "any person affected by the dispute" the Board could restrict the number of pickets, their activities and the location of such activity (*Labour Relations Code (LRC)*, s. 82(2)). In considering this matter, the Board was required to consider the following:

> (a) the *directness of the interest* of persons and trade unions acting under subsection (1)
> (b) violence or the likelihood of violence in connection with actions under subsection (1)
> (c) the desirability of restraining actions under subsection (1) so that the conflict, dispute or difference will not escalate, and
> (d) the right to peaceful free expression of opinion (Section 82(3)) (emphasis added).

In the Opposition's view the inclusion of subsection 3(a) meant that the government had managed to impose the restrictions on picketing that it had intended all along and that the revisions were still not in compliance with the *Charter*. Subsection (a) retained traces of the narrative on Gainers in which violent picket line confrontations were attributed to outsiders. The inclusion of subsections (b) and (c) reflected the general concern with strike violence that had flowed from the Gainers dispute while the final clause was the mark of the debate on *Charter*.

4. Narratives on the Right to Strike and the 1988 illegal Nurses' strike

Earlier in the chapter, I outlined how the 1988 nurses' strike reoriented debate on labour law to those features of the *LRA* that had been introduced by Bill 44 in 1983. The nurses' dispute and the changes in Bill

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[21] This was a new phrase presumably to prohibit secondary picketing.

22 to which this gave rise remained an important feature of political debate on Bill 22. A central issue was the extent to which the revisions proposed in Bill 22 constituted an appropriate response to the dispute. New Democrats contended that Bill 22 was inadequate because it had not restored to nurses the ability to strike. During second reading of the Bill the NDs presented a subamendment which called for a test to establish whether the law was in compliance with "those conventions of the International Labour Organisation [ILO] to which Canada is a signatory". Several years earlier the ILO had concluded that in prohibiting strike action by hospital workers, the *LRA* was in contravention of "acceptable limits on the right to strike" as set out in ILO Convention No. 87 (ILO, n.d.: 6). The New Democrats maintained that Bill 22 remained in violation of this Convention and believed that by referring the matter to the ILO it would be possible:

> ...to bring the weight of the international community to bear on the arguments about whether or not this Bill is a good one and should be passed in its present state (McEachern in *AH*, June 13, 1988: 1698).

There would be no opportunity for the NDs to invoke the moral weight of the ILO to undermine the government's reading of the no-strike ban as the ND subamendment failed.

For the government, however, the strike ban was more than satisfactory. Reid maintained that the need for a no-strike policy was self-evident and that by continuing the ban the government had acted both responsibly and in the interest of all Albertans[22] (*AH*, April 18, 1988: 490). Despite the continuation of the no-strike policy, Reid claimed that revisions to Bill 22's interest arbitration procedures had addressed the concerns raised by the UNA: over government interference. Referring to the responsibilities of the arbitrator, Reid commented that they:

> ...have been changed somewhat, and what was regarded by the nurses in the province and by some others as perhaps an excessive degree of government involvement in the process of arbitration...—that government policy statement has been deleted in the new legislation. Rather, the arbitration panel will consider only the broad economic circumstances in the

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[22] Reid stated that Albertans did not "appreciate having the hospital shut down" in the late 1970s and 1980s and that it was for this reason that the strike ban was introduced in the hospital sector (*AH*, April 18, 1988: 490). This was the same argument that the government had made to support Bill 44 in 1983.

> province, which they would probably do anyway, rather than a specific document prepared by the government indicating the government's policies. That will remove from the arbitration process what was regarded by some people as the sore point... (AH, June 21, 1988: 1914).

Though Reid claimed that changes in compulsory arbitration meant reduced government involvement, the Opposition contended that this was not true of section 113, which authorized Cabinet to decertify a union.[23]

5. Certification and Competing Narratives on Democracy

The government had proposed a number of changes to certification in Bill 60, changes which were subsequently reintroduced in division 5 of Bill 22. Bill 22 retained provisions requiring that evidence of 40% support accompany applications for certification and that all applications be subject to a representation vote. Debate on certification contained familiar narratives on workplace democracy and employment inequities. The Labour Minister adopted the view that a representation vote would guarantee a true expression of worker opinion. He insisted that a vote would ensure that "external influences", such as interference by government, the union and the employer, would be minimized (*AH*, June 21, 1988: 1914).

> The requirement for a secret ballot on all certifications will remove the pressures and coercion that have on occasion been used in the past to try to affect the decision of the individual employee. I cannot emphasize enough...that the decision whether or not employees will be represented by a union is one that should be made by those employees with a minimum of duress and coercion by others and that it is a decision...for those employees and no one else (*AH*, June 7, 1988: 1554).

The Opposition contested the view that a representation vote would safeguard the integrity of a worker's decision about union representation. A mandatory vote was expected to introduce delays that would inevitably leave workers vulnerable to intimidation by employers, who were assumed the more powerful party in the employment relation. Delays introduced by the vote, it was argued, would afford the employer an opportunity to campaign against the union and sway the vote on representation.[24] Requiring a vote was also expected to create new opportunities for "union-busting" firms whose chief purpose was to pressure workers to vote against the union (McEachern, *AH*, June 13, 1700).

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[23] Section 113(a) specified that the Lieutenant Governor in Council was authorized to direct the Board "to revoke the certification of a trade union that causes or participates in a strike that is prohibited by Division 16 or 18". Division 16 set out provisions governing 'compulsory interest arbitration', while Division 18 contained provisions for 'emergencies'.

6. Narratives on the Role of Government

During debate on Bill 22 the Opposition presented section 113 of Bill 22 as a direct and Draconian response by the government to the recent nurses' dispute. This interpretation was also shared by the UNA leadership. UNA President, Margaret Ethier described the decertification provision as "a bullet with the United Nurses' association's name on it" (*EJ*, April 16, 1988: A1). NDP Labour Critic, Bryan Strong maintained that neither of the parties to the dispute had requested such a measure, and that the government had written the clause into the Bill

> because that determined little band of nurses had the audacity to tell this government that they were wrong in the labour legislation that they had passed and had the courage to go out on a picket line (*AH*, June 21, 1988; 1916).

For nurses and members of the Opposition, Section 113 was seen as a form of retribution. There was also suggestion that the provision manifested the frustration that the government had experienced during its handling of the dispute. Throughout the dispute the government had appealed to the rule of law, arguing that the nurses' actions were illegal and therefore wrong. Though aware that the nurses' action was in violation of Alberta law many Albertans did not conclude that the nurses' actions were immoral. Instead the meaning of the nurses' actions was shaped by the view that the law was unfair. Public sympathy for the nurses subsequently had limited the power of the government to act in the strike.

> What surprised the government was that the majority of the people supported the nurses...They thought that if you just make it [i.e. strike action] against the law... then everybody will say. "Well, you're breaking the law; therefore, it's

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[24] During committee study of Bill 22, the New Democrats proposed amendments that called for a representation vote where, at the time of filing the application, union support was greater than 45 percent, but less than 55 percent. Where support was found to be in excess of 55 percent the Board would certify the bargaining agent without a vote.

> wrong." They found out differently (Martin quoted in *AH*, June 7, 1988; 1557).

The opposition contended that section 113 was designed to afford the government greater control and leverage if the situation was ever repeated.

In authorizing cabinet to decertify a union rather than submitting the matter to the courts, the Opposition contended that the provision had afforded the government "absolute power" (Martin quoted in *AH*, June 7, 1988: 1557). This was characterized as the "big stick" approach to industrial relations (*EJ*, April 18, 1988; A6). There was to be no accountability or due process which, for the Opposition, meant that labour's fate in such circumstances would be determined by government caprice. ND labour critic, Bryan Strong maintained that for labour the measure was tantamount to capital punishment without a trial:

> ...does this section mean that a trade union, if it doesn't bow down before this government can have its very existence terminated by this government?... this is a form of capital punishment for trade unions that do not have the same political philosophy as the minister and his cronies. Now, that isn't fair...capital punishment that doesn't have any objective standard, no appeal process, no hearing, no fair impartial hearing, no ability for the trade union to be given a full public hearing and for the public to have full public scrutiny...That isn't going to work: cabinet the judge, the jury, and the executioner, with no public scrutiny—clearly unconstitutional, dictatorial (*AH*, June 7, 1988: 1564-1565).

The Labour Minister indicated that the government had made provision for decertification where workers had disobeyed orders to return to work and where there had been "persistent problems" (*AH*, June 21, 1988: 1914). Reid also expressed doubt that the government would ever be required to invoke the clause. Despite Opposition charges that section 113 was an abuse of government power and unconstitutional the provision was retained in the final version of Bill 22.

7. Trade Union Legitimacy: Narratives on the Americanization of Alberta Labour Law

In addition to familiar narratives on democracy, New Democrats opposed the certification provisions by invoking a new narrative on the "Americanization" of Alberta labour law. Members of the Opposition charged that by requiring mandatory representation votes the Alberta government was venturing away from the Canadian certification system, which had relied on cards as evidence of union support, to the American system. In the United States representation votes were required in all federal certification applications. New Democrats presented the proposed vote as a negative development since in recent decades American unions had experienced less success in organizing workers, a factor that contributed to the drop in U.S. union density rates. Based on these developments, NDs contended that the government's "ultimate goal of "Americanization" was to cut down the number of unionized workers in this province" (Martin, *AH*, June 27, 1988: 2049). The NDs charged that these developments provided insight into the government's real intent with respect to the certification provisions: to "gut" the Alberta labour movement (*AH*, June 27, 1988: 2049). Arguments about promoting democracy, it was argued, were merely a ruse to conceal the government's real intent.

Opponents of the Bill tried to draw out what they believed to be the wider significance of the certification proposals. Using the Americanisation argument the Opposition linked the government's proposed labour law to economic policy, especially its support for free trade with the United States. In their narratives against the free trade agreement New Democrats, labour groups and other constituencies had made the case that moves towards economic integration would have negative social consequences such as the harmonisation of Canadian social policy social and programs with those in the United States offering fewer protections. The Opposition maintained that the mandatory representation vote and the removal of Board-ordered automatic certification provisions were evidence of downward policy harmonisation. The removal of the latter, one New Democrat argued, would

> ... remove the last restraint that existed on employers... With that out of our way...the road is paved — and I suppose this fits in with the government's plan across the way for us to dovetail in with that Mulroney/Reagan trade deal, make sure that our labour laws are just like those of Alabama (Gibeault, *AH*, June 23, 1988: 1996).

Alabama had been used by the Opposition and organized labour in 1986 to problematise the *LRA*. In 1988 NDs cited the legislation in American right-to-work states, such as Alabama, to emphasize how different US laws were, and how much standards in Alberta could potentially fall under free trade (Martin, *AH*, June 7, 1988; 1557). In the Opposition's view the certification changes were driven by the government's desire to provide a regulatory and labour relations environment that would foster business competitiveness under free trade, a belief which it claimed was reinforced by the Bill's preamble.

The Opposition also contended that Alberta labour law would be undermined by changes in Bill 22's prohibited practice provisions. Under section 145(1), employers were prohibited from participating or interfering with the formation/administration of a trade union or "the representation of employees by a trade union". A subsequent clause, however, stated that the employer would not contravene Section 145(1) if he "expresses his views so long as he does not use coercion, intimidation, threats, promises or undue influence" (section 145(2) (c)). The Opposition contended that the inclusion of this provision would allow employers to intimidate employees during union organizing campaigns. ND labour critic, Bryan strong explained that in sanctioning employer speech the law would also afford employers the freedom to coerce employee opinion.

> ...let me recite this employer freedom of speech. Here's what the employer will say: "You know I have nothing against the union, boys, but if our organization, our company, is organized we will have no choice except to close the doors." He hasn't committed an unfair labour practice, because what the minister has done is make it okay (*AH*, June 23, 1988: 2009).

The New Democrats also maintained that the employer's ability to manipulate worker opinion would be facilitated by changes in ALRB powers. Under both the *Labour Relations Act* and Bill 60, the Board could, following an inquiry into an unfair labour practice (ULP), issue a directive automatically certifying a trade union as bargaining agent. This was withdrawn, however, in Bill 22. Section 15(7) of Bill 22 stated that the ALRB, in enforcing the Act, could order "any remedy that is appropriate to the matter", though it could not:

> certify a trade union or...revoke the certification of a trade union unless the majority of the employees voting at a representation vote conducted by the Board vote in favour of the certification or revocation of certification.

The Opposition linked the change to the Board's response to the Mariposa case and claimed that absent this power there would be little to deter employers from abusing their influence during organizing drives. The withdrawal of this power, the Opposition argued, would serve to "encourage" employers to "harass and threaten" employees who were deciding on union representation (Mjolsness in *AH*, June 23, 1988: 1995). In effect, the New Democrats contended, Bill 22 would create additional obstacles to unionization. According to the Opposition, removal of the automatic certification provision would only be warranted if the government could also claim there were no longer "bad employers" in the province (AH, June 23, 1988: 1992). Since this was not the case the Opposition contended that it was only fair that the ALRB retain the authority to certify without a vote. Workers needed legal protections from employers who used their influence to resist unionisation. For these reasons the NDs proposed amendents that reintroduced a stronger statement on board-ordered automatic certification as well as first contract arbitration in recognition that a union certificate did not guarantee a collective agreement, as exemplified by the cases of Mariposa and Parkland. For the Opposition, the integrity of employees' freedom of choice would not be guaranteed through the secret ballot, but through measures intended to mitigate employer intimidation and intransigence.

8. Narratives on the Economy

The opposition cited free trade not only in arguments against the proposed certification provisions but also to discredit Bill 22 as a whole. To do this the Opposition focused on the contents of the Bill's preamble which the Opposition and the government agreed set the tone of the legislation that followed. Reid noted that the preamble:

> set out the philosophy that must be kept in mind when reading every section of the statute as the philosophical statement of the government in relation to the *Labour Relations Code* (*AH*, June 7, 1988: 1553).

The five statements that comprised the preamble had debuted in Bill 60 in 1987 and were subsequently reintroduced in Bills 21 and 22. The preamble had not been identified as a problem in submissions to Bill 60. Employers had noted their support for the statements, though some expressed doubt over the extent to which the stated principles were manifest in the Bill. The AFL, however, condemned the preamble owing to its economic focus, a view that was subsequently taken up by the Opposition during legislative debate on Bill 22.

It was the Opposition's position that the statements that preceded Bill 22 were inappropriate for labour legislation. Opposition MLAs expressed particular concern about the first statement which they purported made clear the government's priorities and true intent regarding Bill 22. The Opposition contended that the first statement which included the phrase "competitive worldwide market" had no legitimate place in labour law (Strong quoted in *AH*, June 21, 1988: 1918). An Opposition MLA maintained that the statement reflected the government's preoccupation with "the market":

> You will notice the very first whereas in Bill 22. The most important concept here is the concept of the "world-wide market economy of which Alberta is a part". It's clear that that tells anyone who cares to read the Bill what will be coming after, that the most important thing to the authors of the Bill is the concept of the market. In fact...we could really call this a good enunciation of the religion of our PC friends across the way, that we've developed this religion called "marketism", that we worship the market. We're prepared to make human sacrifices to the market...It doesn't matter if people get laid off, if they're unemployed, if they're intimidated or harassed at the workplace, as long as the market is served (Gibeault, *AH*, June 23, 1988: 1996-97).

The Opposition also contended that the government's deification of the market meant that there was no legitimate place for unions.

> We have a Bill that says very clearly in its whole thrust that unions are a nuisance. They're a thorn in your side. They're really not a part of the economic system. They don't fit into the market model very well (Gibeault, *AH*, June 23, 1996)

The absence of any references to labour unions in the preamble seemed to support the Opposition's claim that unions were not legitimate participants in labour relations. The preamble only mentioned relations between employees and employers, even in the fourth statement which stated that "statutory rights and responsibilities" were to be clearly set out and understood.

The Opposition contended that the preamble also signified that the labour code was going to be used as a tool to ensure that Alberta business could compete in a free trade environment. In reference to the first statement, a New Democrat maintained that:

> it does mean that we signal from the start the sort of Bill that we are being served up, a sort of Bill which will admirably fit into the so-called free trade initiative of this government and the Mulroney government, because it will help to keep down labour costs in this province and make us more competitive in this, in effect, common market that the trade Bill seeks to institute (Wright, *AH*, June 23, 1988: 1998).

Others cited the preamble as evidence that the government intended to keep Alberta competitive through policy harmonisation.

> What we have here is a Bill that is designed and says in its first whereas in its preamble that it is designed to make sure that whatever is the lowest wage and lowest standard and the most despicable working conditions anywhere in that North American market, that is what Alberta will have to descend to stay competitive in a business sense (Younie, *AH*, June 21, 1988; 1934).

Viewed against the backdrop of free trade with the United States, references to competitiveness and the world-wide market were understood by the Opposition to connote a certain government "agenda" which would involve negative ramifications for the future of Alberta labour law and workers' rights

The Opposition claimed that labour legislation was supposed to establish worker and trade union rights and protections: it was to serve as a "charter of rights" for workers (McEachern, *AH*, June 13, 1988: 1700). Conspicuously absent from the statements was reference to a range of worker rights and freedoms. New Democrats complained that the preamble made clear that the Bill had not been written with these purposes in mind. As one New Democrat observed, the preamble:

> doesn't recognize the freedom to associate, the freedom to organize workers, the freedom to invoke economic sanctions, the freedom to bargain collectively if an agreement cannot be reached (Pashak in *AH*, June 21, 1988: 1922).
>
> ...what this legislation fails to set out in its preamble is a recognition that people have a right to belong to a trade union, that that's an inherent part of any individual's right in a free and democratic society and that that right should not be impeded in any way (Pashak in *AH*, June 21, 1988: 1923).

In its amendments to Bill 22 the Opposition proposed revisions (see Fig. 5) that acknowledged a role for trade unions and that provided, like the Canada *Labour Code*, for the "encouragement" of free collective bargaining.

Figure 7.1 The Preamble Proposed by the New Democrats

WHEREAS there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common-well being through the encouragement of free collective bargaining and the constructive settlement of disputes; and

WHEREAS Albertan workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations; and

WHEREAS the Legislature desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive bargaining practices, and deems the development of good industrial relations to be in the best interests of Alberta in ensuring a just share of the fruits of progress to all;

The government did not share the Opposition's concerns. Reference to the economy would not compromise fairness; to the contrary. Economic concerns had proven to be of use to the government throughout the review in its efforts to direct the review initiative. It had provided a rationale for the review that was unrelated to the events at Gainers and it had also provided an important conceptual framework for the LLRC as it undertook its task. During debate on Bill 22 the Minister indicated that the legislation would not only prepare Alberta for the challenges of the next century, but would also allow the province to jettison an unsuitable system of labour law. Alberta he commented had "inherited" legislation from the United States and Great Britain that was "based upon the results of the industrial revolution". Since Alberta had not experienced an industrial revolution, but had instead moved from an agrarian society to a "postindustrial, high-technology society", provincial labour legislation had been an anachronism.

> ...it may be that since the first Labour Act in the province in 1947, we have indeed had legislation that was not suited to the Alberta economy or society or work force, but was more based on the confrontations that developed in the 18th and 19th centuries, rather than concepts that should have developed in the 20th century. As a result, we have had the traditional...and...confrontatory approach to labour relations (*AH*, June 21, 1988: 1913).

In drafting Bill 22, Reid maintained that the government had done Albertans a great service. A benefit of making Alberta's labour laws compatible with the provincial economy, he contended, would eliminate union-management discord. Since this incompatibility was judged to be the source of adversarialism, the government was able to claim that it had addressed the issue of conflict without addressing the issues raised during Gainers: banning replacement workers, the 25 hour lockout and so on. The minister maintained that reduced hostilities would be key to Alberta business's ability to maintain its competitive edge. Abandoning adversarialism in favour of "successful" labour-management relations would first require a recognition that both parties had a "common interest" in the success of a business, and that this would be realised through "open and honest communication." Such a position had been adopted by the LLRC during the review and was embedded in the Bill's preamble. Both principles had been set out as guiding principles of the legislation in the preamble. Reid claimed that it was not unrealistic to expect parties to move away from an approach based on confrontation to one based on co-operation and cited labour relations at Suncor and Cardinal River Coals to make his case. The purpose of Bill 22, he insisted, was to encourage similar union-management relations in all unionized organizations without their first having to experience the "pain" of a strike, as had been the case at Suncor and Cardinal River (*AH*, June 21, 1988: 1913).

Though the Opposition claimed that free trade was a driving force behind Bill 22, the government, despite its willingness to discuss labour law in relation to the economy, made no explicit reference to free trade in its public comments on labour relations. The government's support for free trade and its labour legislation were made in similar terms. A 1986 government document that supported free trade with the United States stated that:

> We produce far more than we can consume domestically. We can, and must, compete effectively in the international arena.

> It is the surest way of creating jobs and revitalizing our economy. (Alberta, 1986a: 1).
>
> The benefits resulting from our export of goods and services cannot be overstated. Alberta's economic well-being and the majority of jobs are closely linked to sales beyond our provincial borders. Thus, it is vital that we pursue wider and more secure access to external markets (Alberta, 1986a: 4).

Some two years later Reid used similar arguments to make a case for Bill 22.

> realizing Alberta's place in the competitive world that we export to — and one has to remember that Alberta exports the highest percentage of its gross provincial product of any other province in Canada and that Canada has got a disproportionate trade for its size compared to other countries in that we export and import large percentages of our domestic product. In that context, Albertans have to realize that our economy and our economic success as individuals as well as a society are based upon our relationship with the rest of the world (*Alberta Hansard*, June 21, 1988: 1913).

Reid's efforts to promote Bill 22 did bear a strong resemblance to narratives[25] that the government had used to support the free trade initiative. Though members of the government had raised the issue of competitiveness and trading relations in debate on labour legislation, it is significant that the Minister made no mention of free trade, especially since the Alberta government had been such an ardent supporter of the initiative. To have uttered free trade in the debate on Bill 22 could have reinforced Opposition claims that the two initiatives were linked and that the Bill constituted an instance of the Americanisation of Canadian policy. Despite these charges the government made no changes to Bill 22's certification provisions or to its preamble

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[25] Traces of narratives on free trade were also apparent in the Minister's use of language. To support the claim that Bill 22 was fair and equitable , Reid spoke about the Bill resulting in a "level playing field", a term which had seen wide use during the public debate on free trade (*AH*, June 7, 1988: 1554). The Liberals and the New Democrats both used the term in arguments which cast the law as unfair, but in many instances they were careful to identify the term as the government's (*AH*, June 21, 1988: 1920). The level playing field was government "lingo", "blather" and, in reference to Prime Minister Mulroney whose government had pursued the deal, "Mulroney bafflegab talk" (*AH*, June 21, 1988; 1921; Barrett, *AH*, June 13, 1988; 1697).

F. Concluding Remarks

In this Chapter I have tried to account for two sets of legal changes: those that appeared in Bill 21 and Bill 22 at first reading in April, 1988; and those contained in the revised version of Bill 22 which was introduced at third reading and which was proclaimed law on November 28, 1988. Many of the changes that appeared in the original version of Bill 22 in April, 1988 can be traced to understandings of specific clauses in Bill 60 that were presented in submissions to the Minister of Labour. In the previous chapter I outlined provisions in Bill 60 that had been cited by employers as problematic and the narratives in which they had been constructed as such. Opposition to Bill 60 in the business community was far-ranging and organized. In their submissions, employers had identified a number of employment standards provisions in narratives on employment costs, flexibility and competitiveness. Employers had also expressed concerns in narratives on management rights. The government questioned employer readings of the Bill but later, in what it described as an effort to clarify misunderstandings about the legislation, the government addressed many of the problems that employers had identified. The Bill did not accede to all employer demands, though in many cases changes were made that afforded employers a greater degree of flexibility in complying with the legislation.

Understanding the changes in the labour relations provisions set out in Bill 22 was somewhat more challenging. As with employment standards, a number of the changes could be traced to demands issued in submissions on Bill 60. Employers and the AFL, for instance, both interpreted changes in collective bargaining as problematic in narratives on excessive government involvement. In response the government reduced its role in the mediation process. Employers and labour also urged the government to drop the communication and education provisions on the grounds that they interfered with management and labour rights respectively. While some of the most interventionist communication and education provisions (i.e., those that authorized Cabinet to make and impose regulations on the parties) were dropped from the legislation, most were retained.

When viewed in relation to the problems that were identified in submissions to the Minister, it becomes apparent that many of the revisions in Bills 21 and 22 were influenced by employer interpretations of Bill 60. The government had responded to employer lobbying efforts and to specific problems that employers had been able to identify in various narrative accounts. While it is possible to see evidence of employer efforts to restrict the government's pursuit of its own policy agenda, the Tories did not respond to each and every concern raised by employers, and the state retained a measure of relative autonomy. Meanwhile, labour's ability to shape Bill 22 had been very limited.

A number of significant changes in Bill 22 were not proposed by employers in their submissions on Bill 60. Instead the changes were a response to interpretations of the 1988 illegal strike by Alberta nurses. As in the case of the Gainers dispute, there were various interpretations of the nurses' dispute. A persuasive account of events located the chief cause of the dispute with the *LRA*, specifically those provisions—the no-strike and compulsory arbitration provisions for hospital workers—which had been introduced in Bill 44 in 1983. Focus on these aspects of the *Act* also prompted a revival of those narratives that had emerged in 1983. Though the nurses had struck in violation of the law, the view that the no-strike and compulsory arbitration provisions were flawed created a certain amount of sympathy for the strikers, as was the case in the Gainers strike. I have argued that the relaxed restrictions governing arbitrators' awards proposed in Bill 22 can be traced to the narratives that had resurfaced during the nurses strike. This was also true of section 113 which vested Cabinet with the authority to decertify unions that defied the no-strike policy.

During political debate on Bill 22 the New Democratic Opposition made a concerted effort to stall the legislation and to press the government for revisions. As part of this strategy the Opposition appealed to narratives on Gainers. Though not nearly as prominent as in prior debate on the *LRA*, arguments that had been used to press for change in 1986 were revived in 1988 to underscore that Bill 22 was not fair and equitable, as the government had contended. ND MLAs insisted that Bill 22 had not adequately responded to the problems that had precipitated the Gainers strike. There were no restrictions on replacement workers—even the provision in Bill 60 that prohibited professional strikebreakers had been deleted from Bill 22. Much of the Opposition's commentary on the Bill was focused on new provisions in Bill 22 rather than what was absent from the legislation. Opposition MLAs tried to discredit the restrictions on picketing by presenting them as a manifestation of Peter Pocklington's influence on the government. The Opposition also claimed that the deletion of the provision that authorized the ALRB to automatically certify a bargaining unit was connected to the Board directed certification in the Mariposa case. The provision was purportedly dropped to ensure that similar action could not be taken by the Board again. Changes in certification procedures, especially the mandatory representation vote, prompted NDs to attack the government's claims to be furthering democracy in the workplace. The Opposition's case against the mandatory vote also involved claims that the government was attempting to Americanize Alberta labour law. By forging links between labour law in Alberta with legislation in the United

States the Opposition was also able to draw on broader narratives on free trade.

The Opposition used a number of arguments to lobby for amendments that were more consistent with its conception of fair legislation. Such demands were met with limited success. The NDs were only able to force change to Bill 22's picketing provisions which restricted picketing to those persons having a "direct interest" in the dispute. New Democrats made repeated claims that section 81 was in violation of the *Charter*, a position that even some members of the business community had been willing to concede. Recognizing that the Opposition's interpretation was not without merit, the government reformulated its restrictions.

The NDs' attempts to press for particular changes by appealing to local and more generalized narratives, and to stall the Bill through various motions, were on the whole unsuccessful. The Tories controlled the Legislature and could as a result control the progress of Bills 21 and 22. The government repeatedly resorted to closure to push both Bills through the legislature. In an effort to undermine the legitimacy of such measures (and the ability of the government to use its power in this way), the Opposition appealed to narratives on democracy. Closure, the NDs contended, was not the kind of action that was acceptable in a democratic state like Canada. The government, however, dismissed such charges and continued to use closure to cut off debate and force the bill through the various legislative stages. Perhaps the government was anxious to end the process so as to avoid the reviving public debate on labour law that had constrained its actions during the Gainers dispute.

VIII. Conclusions

A. Introduction

The objective of this study has been to understand how labour law reform occurs. In other words how is it possible to account for the inclusion of some provisions and the exclusion of others in a labour relations statute. Using the 1986-1988 case of Alberta I have explored these issues in considerable detail. To do this I have treated meaning as a central problematic. The pursuit of legal change or reform presupposes that the law is somehow flawed, or deficient and in need of improvements. In order to establish what is wrong with a law and then how such problems might be remedied, stakeholders must know what the law means. Legal meaning, however, is not a tangible entity that inheres in the legal text, but is something that is produced in narrative accounts. Establishing that a law is problematic and in need of change is a political process, as evidenced in chapter four in my analysis of the 1986 Gainers dispute. In narratives it is possible to identify specific problems in labour law. Narratives also shape the way that we conceive of changing the law by setting parameters for what count as permissible changes. As contexts change so do narratives and our understandings of what is right or wrong with the law and what counts as reasonable change.

In this final chapter I propose a number of things. First I will provide an overview of the issues that I raised in chapter one and that I explored throughout this dissertation. Then I address the specifics of legal change in Alberta in 1986-1988. I review how the *LRA* was drawn into public debate in narratives on Gainers and the confluence of events and conditions that forced labour law on to the Tories' formal political agenda. Then I consider how narratives shaped proposals for change and the way that various legal texts (e.g., Bill 60, Bill 22 and Bill 21) privileged some narratives and social visions while suppressing others. I also address how narrative analysis enhances the theoretical insights offered by functionalism, pluralism and Marxism. I conclude the chapter and the thesis by making a number of suggestions for further research.

B. Narrative and Legal Change

1. Making Meaning Problematic

Understanding the meaning of an event or a text is not an unproblematic undertaking. The meaning of an event is not readily observable or somehow self-evident (Goodwin, 1994). Narrative analysis, however, provides a way of grappling with meaning and the way that meaning is constructed (Polkinghorne, 1988). The meaning of the Gainers dispute, for example, which proved to be pivotal in the problematization of the *LRA*, was presented in competing narrative accounts. In these accounts events and context were configured in different ways. In one account the strike was explained in terms of certain labour relations practices—the employer's deployment of replacement labour and the 25 hour lockout—which in turn were used to implicate the *LRA*. In another account there was no reference to replacement labour, 25 hour lockouts or the *LRA*. Instead confrontations were linked to the presence of "outsiders" and a few "troublemakers" on the picket lines. The links that are made between the elements (setting, events) that comprise narrative transform discourse into narrative discourse and transformed the flow of social experience into narrative schemas. In this way it is possible to see that events do not naturally unfold in a story-like fashion. There is no singular account of the Gainers dispute. Instead, stories are fashioned, they are human creations that make experience meaningful.

Language provides an almost endless number of ways to construct the meaning of an event. Only a handful of narrative accounts are offered, as was the case in the 1986 Gainers dispute. Gainers took on meaning in relation to a number of developments: the UFCW's unwillingness to acknowledge the "new economic realities"; deficiencies in the *LRA*; the attendance of "troublemakers" on Gainers picket lines; and so forth. The strike could conceivably have been presented in other narratives. The strike violence could have been attributed to astrological events, but such an account would transgress the bounds of what would be considered reasonable. As White (1992) writes:

> the stories that persons live by are rarely, if ever, "radically constructed"—it is not a matter of them being made up, "out of the blue," so to speak. Our culturally available and

> appropriate stories...have been historically constructed and negotiated in communities of persons, and within the context of social structures and institutions (cited in Riessman, 1993: 65).

The way that we are able to conceive events is not conducted in a social void in which "anything goes". Instead the statements that comprise narrative discourse are guided and constrained by wider norms about what is credible and defensible.

Constructing narratives is a socially contingent activity that gives voice to pre-existing ways of seeing the world. I have tried to show how trade unions and other actors have drawn on existing discourse to give meaning to labour legislation and in attempts to oppose and defend specific legal changes. Understandings of the prevailing economic setting have played an important role in making labour law. The American *Wagner Act*, which has had a lasting impact on contemporary Canadian labour law, was devised as a means to mitigate the deflationary pressures of the Great Depression. More recently amendments to Alberta's *LRA*, proposed in Bill 110 in 1983, assumed meaning in local discourse on the economic downturn in the province's construction sector (Refer to chapter three for more details). In the mid to late 1980s understandings of the economy have been shaped by a discourse on competitiveness, a discourse that had a significant influence on the contents of Bills 60 and 22. In this dissertation I have argued that the economy is one of a number of narrative themes that have shaped our understanding of labour relations and labour law. There is nothing natural or inevitable about these features of debate. Instead they became part of labour relations discourse at specific moments in time and under specific social conditions. The narrative themes suggest that there are patterns in the way that we conceive labour relations and that there are common threads that link our understanding of present events to the past.

In addition to seeing the common themes that have shaped debate on labour law, narrative provides a way to understand the diversity and instability of legal meanings. New events and conditions create the possibility for narrators to configure events in a new way which result in different interpretations of the legal text. Events in the Mariposa case, for example, redirected debate on labour law to what the AFL claimed were other flaws in the *LRA*. In doing so labour had expanded the flawed law narrative. The 1988 nurses' dispute had the effect of reviving debate on labour law; the issue of labour reform had faded from the public's view. New Democrats and labour explained the strike by linking it to the past: by presenting the dispute in relation to the enactment of Bill 44 which removed the right to strike from hospital workers and imposed compulsory interest arbitration. In 1988 New Democrats revived narratives on the right to strike. The legal meanings that were produced in 1988 were not a simple replication of those produced in 1983 because the context had changed. In narratives on the right to strike in 1983, for example, New Democrats had predicted that labour would never accept the strike ban and would at some point in the future defy the law. In 1988, the New Democrats presented nurses' strike as a prophetic event with significant moral connotations. In a review of post-structuralist theory, Eagleton (1983: 129) notes:

> Meaning...is...never identical with itself...It is difficult to know what a sign 'originally' means, what its 'original' context was: we simply encounter it in many different situations, and although it must maintain a certain consistency across those situations in order to be an identifiable sign at all, because its context is always different it is never *absolutely* the same, never quite identical with itself (emphasis in original).

Context is indispensable to meaning. It affects the way that we construct narratives about the law: the problems that we are able to identify in its provisions and the proposals for change that seem reasonable and appropriate. A sensitivity to context—to both local and broader conditions—provides a way to account for specific legal changes and the variations in legal content across jurisdictions, such as across provincial jurisdictions.

2. Context and the Reification of law

Narrative analysis allows us to see the inherently social nature of legal statements. This is significant because the language of the legal text plays a significant role in reinforcing the view that the law is an external, independent force that seemingly impinges from above. A goal of the Critical Legal Studies (CLS) movement has been to pierce the myth of the rule of law and to challenge the view disseminated traditional legal scholarship that law develops autonomously (Hunt, 1986). In CLS law is to be regarded as "intimately connected to a social totality" (Kairys, 1990: 8). Despite these claims CLS scholars, such as Karl Klare, have focused on doctrinal developments in "splendid isolation" from their wider social contexts (Conaghan, 1987). In this study, using narrative, I have examined how law acquires meaning and how such meanings shape proposals for change. In this way I have tried to demonstrate the social basis of law.

Narrative analysis demonstrates that legal provisions are not neutral, and how they bear traces of certain ways of envisioning labour relations. As I noted in chapter two, a project of CLS work on labour law has been to expose the hidden meanings and assumptions that under gird liberal conceptions of collective bargaining (e.g. Atleson, 1983; Klare, 1983). Klare (1990) contends that embedded in labour law are "moral and political vision[s]" that effectively reinforce society's dominant institutions and culture. In this study I have tried to show not only how certain privileged social visions of labour relations find expression in legal content, but also, if we are able and willing to consider law in its discursive context, how the law is inscribed with traces of social visions that also get suppressed (see Balkin, 1987). By exploring the connections between narrative and legal proposals it is possible to see how these traces of narrative are manifest in legal content; how, for instance, the former is present in the absence of the latter. Examining law in different contexts over time allows the reader to grasp the complexity of meaning and to see the sedimented nature of legal meanings

Context reveals the contingency of law, and undermines the perception that law is somehow pre-ordained, natural or inevitable. Viewing legal developments within their wider social context also undermines the claim that law-making is a determinate process. The Conservative government's decision to review the operation of Alberta labour law in 1986 was, as chapter four shows, made under specific social conditions. Contingencies, confluences and chance occurrences of the social mean that uncertainty must be taken as a serious part of the formation of law. Law is not pre-determined but rather something that is played out in practice amongst actors making representations to one another. This view reinforces the need to be sensitive to the details, to the interactions, and the ways that these are worked through in practice.

C. Narrative and Legal Change in Alberta

1. Narrative and the Politicization of the LRA

In the summer of 1986 the meaning of the Alberta *Labour Relations Act* (*LRA*) became a matter of public debate. The belief that the *LRA* was problematic had been organized labour's view for some time, though this had not been the prevailing view (Noel and Gardner, 1990). Events at Gainers in June, 1986 were critical in bringing labour's reading of the

LRA, especially its concerns over replacement labour and 25 hour lockouts to a broader audience. Gainers workers had voted overwhelmingly in support of industrial action, action which commenced on June 1, 1986. Within hours of the strike deadline violent confrontations were reported on Gainers picket lines and the strike was quickly transformed into a media event.

Efforts to understand developments in the Gainers dispute had significant implications for the *LRA*. The strike, like other events, had no objective meaning (Goodwin, 1994) or meaning that all observers could agree upon, perhaps with the exception that the strike was legal— meaning that the parties had complied with all of the requisite legal procedures set out in the *LRA*. Instead, understandings of the strike were fashioned in a number of narrative accounts. These accounts were framed around a number of themes. In the "new realities" account the strike was explained in terms of changes in the economy. Gainers owner, Peter Pocklington, presented the strike in terms of the market realities of the meatpacking sector. More specifically, Pocklington linked developments in the strike to the UFCW's unwillingness to recognize these "new realities" in its bargaining demands. Debate also focused on government's role in the dispute. Initially the government presented the events as "normal" developments in industrial relations, an account which it used to support its calls for the parties to sort matters out themselves. Presenting the developments as a manifestation of typical strike emotions, also provided the Tories with a rationale for not responding to demands that the government intervene in the strike. The government's account of the strike as "normal" labour relations was revised, however, as debate began to focus on the status of the *LRA*.

Narrative links were made between the *LRA* and the Gainers strike within the first few days of the strike. Labour officials and opposition MLAs claimed that picket line violence was a manifestation of the frustration and fear created by Alberta's labour relations legislation. Labour law was presented as problematic because it was imbalanced and did not adequately protect labour's rights. There were claims that the '25 hour lockout' in the construction sector, in conjunction with the employer's ability to hire strike replacements, meant that losing a strike would also cost the strikers their jobs or, if they returned to work on an individual basis, their collective bargaining rights. Labour argued that only when the government had taken action to redress flaws in the *LRA* would the violence witnessed at Gainers be prevented in the future. The Tories responded to these demands by attempting to break the narrative links that had been forged between the *LRA* and the confrontations at Gainers. As debate had shifted to the law, the government's assessment of the strike as "normal" was no longer appropriate. In an attempt to show that legal change was unnecessary the Tories began to characterize the developments at Gainers as "atypical". This revision in the government's representation of the strike was a response to the flawed law narrative, and a development that revealed the fluidity of meaning.

Narratives on the Gainers dispute did not have equal appeal, an important factor in the problematization of Alberta labour relations law. Narrative accounts that linked the violence at Gainers to problems in the *LRA* seemed to be more persuasive than competing accounts of the dispute. Claims that the events at Gainers were "normal" developments in collective bargaining were difficult to sustain when considered in relation to images of the dispute: with Gainer's workers and their supporters embattled with police and riot-equipped police. Something seemed wrong and the government's account to the contrary was not convincing. The Tories' contradictory representations of the strike—first as "normal" and then as "atypical"—did not lend credibility to either of the government's accounts.

The level of police force used against the strikers also had the effect of creating sympathy for labour and labour's representation of events. Statements by Gainers owner, Peter Pocklington, had a similar effect: undermining the credibility of his own accounts while boosting that of labour's. Pocklington did not hide his disdain for the UFCW; he had denounced union members as terrorists and had made clear that he wanted to deal with workers on an individual rather than on a collective basis. Pocklington's remarks, together with Gainer's aggressive use of strike replacements, resonated with the view that the law allowed employers to treat workers unfairly. This contributed to the appeal of labour's views on both Gainers' intentions and the status of provincial labour law to a broader public.

In addition to the potency of labour's narrative on Gainers, there were a number of events that account for the government's decision to take up the issue of labour law. The rapidity with which organized labour used the Gainers strike to rally public support for labour reform was critical. The large public demonstrations made labour law a difficult issue to ignore. The timing of the Gainers dispute shortly before the Speech from the Throne, in which the government would outline its plans for the impending legislative session, was also significant[1]. The coincidence of developments at Gainers with the Speech from the Throne meant that the government was forced to decide whether it could afford to sidestep the labour law controversy or whether it should make labour law a part of its legislative agenda.

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[1] One might surmise that had the Gainers crisis occurred at another time:—when the government was not about to make public its plans for the upcoming legislative session—the government could have avoided making any formal commitment to review Alberta labour legislation. This points to the contingency of the undertaking.

In its Speech from the Throne the government made a commitment to review provincial labour law. By including such a promise in its Throne Speech the Tories had acknowledged labour law as an issue. The government, however, presented its commitment in a way that contested the claim that recent events at Gainers were the result of the *LRA*. Though the Tories were under strong pressure to respond to the flawed law narrative, the government had reacted in a way that allowed it to undertake a legal review on its own terms. Nowhere in the Speech was there any reference made to the following: the Gainers strike or any of the other ongoing labour disputes across the province; to replacement workers; to 25 hour lockouts; to the view that the law was problematic; or to the likelihood or necessity of legal change. Such matters were all excluded. This then can be viewed as further efforts by the government to resist the flawed law narrative.

In the months that followed the Throne Speech, the government continued to contest the flawed law account of Gainers. Tories claimed that its plans to undertake a legal review were unconnected to developments at Gainers and that in conducting the review it would be mindful of the challenges of growing competitiveness. Others responded to the flawed law narrative quite differently. In newspaper reports on labour law the labour review initiative was portrayed as a direct response to the Gainers strike. Here the relation that had been drawn between the government's review and recent events at Gainers was treated as "fact".

2. Narrative and the Formation of Legal Proposals

Establishing what labour law means is critical in understanding how proposals for change are formulated. How we "see" labour legislation—the flaws and problems that we are able to discern—influences how we are able to formulate proposals for change. In the discussion that follows I will briefly review how understandings of the Alberta labour law were constructed and how these meanings were translated into proposals for change.

In June, 1986 demands for legislative change issued by labour and those sympathetic to labour's position, flowed from the flawed law account of events at Gainers. In this account the problems at Gainers were attributed to flaws in the *LRA* such as the employer's ability to hire replacement labour. Labour reiterated these concerns in its submissions to the LLRC. As the labour relations environment changed, labour expanded the flawed law narrative to include a number of other problems. Following reports that Gainers had taken unilateral action to end the employee pension plan, labour also called for legal changes that would clearly guarantee workers' entitlement to pension benefits. Labour also claimed that the firing of Mariposa employees during a union organizing drive in August, 1986 also brought into focus problems in the law's certification and employer unfair labour practice (ULP) provisions. In their submissions, labour and labour supporters also took the opportunity to set out the problems that labour had identified prior to the strike at Gainers. This included spinoffs and 25 hour lockouts in the construction sector and the strike ban imposed by Bill 44. Labour's concerns were no longer limited to the legal problems brought into focus in narratives on Gainers, but were expanded to include an array of other problems.

Labour also began to present the problems in the *LRA* in terms of a number of the narrative themes that I identified in chapter two: trade union rights and the legitimacy of unions and collective bargaining. Labour claimed that a central purpose of labour law was to protect worker rights. To protect its right to collective bargaining and to strike, labour called for provisions that would end the use of replacement labour and the 25 hour lockout. Citing the recent spin-off of non-union firms in the construction sector, labour also demanded changes that would protect union successor rights. Labour also claimed that the ban on strike action in the hospital sector infringed upon its right to strike. It called for the restoration of the ability to strike and for the relaxation of restrictions on secondary picketing which it claimed interfered with its right to picket. The *LRA's* provisions regulating certification and employer ULPs were also treated as a threat to labour's right to organize.

Labour also used narratives on trade union legitimacy to support demands for legal change. Employers, labour believed, had the power to thwart workers efforts to unionise and to bargain collectively. For labour, then, the law needed to provide added protections in these areas. Labour claimed that the *LRA* did not deter employers from engaging in anti-union practices. Based on this account, some unions demanded provisions that clearly authorized the Alberta Labour Relations Board (ALRB) to automatically certify bargaining units where an employer was found to have interfered in a union's organizing drive. Labour also issued a number of other demands including first contract arbitration so that employers could not find ways around their obligation to engage in collective bargaining.

In their submissions to the LLRC Alberta employers' foremost concern was not to issue demands for change but to challenge labour's flawed law account of events at Gainers and the proposals for change that this supported. Employers contested labour's premise that the *LRA* was unfair by invoking a narrative that had been used by the Tories to sever the explanatory links between the unrest at Gainers and the *LRA*. Employers claimed that the strike was "atypical" and was therefore in no way indicative of the effectiveness of Alberta's labour legislation. This narrative served as the basis for employer demands for the *status quo*.

In other efforts to discredit labour's demands, employers presented labour law in narratives on the economy. Employers predicted that if the government were to respond to labour's demands, the economic consequences would be dire. Employers told stories about reductions in employment "flexibility" and "competitiveness". A year later the economy remained an important narrative theme in employer reactions to Bill 60. Instead of focusing on labour's demands, employers used narratives on "costs", "competitiveness" and "flexibility" to attack specific provisions in the proposed legislation and as a basis for recommending specific deletions and revisions. Employers also began to make narrative links between Bill 60 and free trade with the United States.

Employer interpretations of the *LRA* and Bill 60 were also structured around narratives on rights: management rights. In submissions to the LLRC, employers explained that the changes proposed by labour, such as restrictions on replacement labour, would interfere with an employer's ability to maintain business operations and to test his/her employment offer in the market. Later employers contended that a number of provisions in Bill 60 were unacceptable because they increased government intervention in labour relations and interfered in management rights. Among those identified as problematic were the new communication and education provisions which manifested the Tories' and the LLRC's vision of a more consensual collective bargaining system.

The Tories opposed labour's program of change, as evidenced by the continued efforts to avoid discussion of Gainers and the summer's labour strife. Rather than addressing the specific concerns raised in labour's accounts of Gainers, LLRC documents framed the review in much more abstract terms. As part of its effort to refocus debate the government began to construct an alternate rationale for the labour review. Government and LLRC discourse on labour law was framed primarily around economic themes, especially narratives on competitiveness and on the state of labour-management relationship in the context of a competitive economy. In the case of the latter, the LLRC talked about the importance of replicating in Alberta the kind of consensual, consultative and co-operative labour relations that existed in Japan and West Germany. In this account, there was a need for the parties to abandon adversarialism in preference to a "commonality of interest".

Generally labour and its supporters and employers and employer associations interpreted the *LRA* and Bill 60 in different narrative accounts. In their submissions to the LLRC, labour unions continued to identify problems in the *LRA* by way of reference to Gainers. The flaws that labour identified in the *LRA* were not limited to those highlighted by the summer's unrest, but also included problems that it had identified prior to and after the 1986 strike at Gainers. In submissions to the LLRC, labour had identified legal problems in narratives on "rights" and "trade union/collective bargaining legitimacy", but these concerns were more of a focus in briefs on Bill 60. In its submissions on Bill 60 links between the *LRA* and Gainers became much more tenuous. By weakening the ties between Gainers and the law, labour was playing into the government's hands in terms of its efforts to break the narrative links that labour had so successfully drawn during the summer of 1986.

Employers appealed to different narratives. Initially employers had presented developments at Gainers as "atypical" in an attempt to discredit labour's demands for reform. Employers had also drawn on narratives on management rights and the economy to make a case for the *status quo*. These themes were used to oppose specific changes presented in Bill 60. Generally employers and unions used different narratives to identify different problems in the *LRA* and in Bill 60. There was some overlap though. Both parties, for instance, appealed to narratives on "government interference" to oppose the new communication and education provisions. Employers and labour both rejected the government's attempts to translate its narrative on consensual labour relations into legal provisions.

3. The Manifestation of Narrative in the Legal Text

Though a range of proposals for change may be issued only a subset may be enacted by the legislature. The inclusion of some statements and the absence of others are not only significant in terms of labour relations practice, but also in a broader sense in that they embody certain visions of the social. Viewed in context the revisions do not appear neutral, but value-laden, as they are informed by certain beliefs about the way labour relations should be conducted. In this dissertation I have explored how narrative became manifest in revisions to Alberta labour legislation (i.e., Bill 60, Bill 21 and Bill 22). In my examination of the additions, alterations and deletions that appear in the legal texts I not only draw attention to the way that certain social visions are given expression in law, but also to the ways that others are suppressed. I have tried to show how, when viewed in context, it is possible to see how these meanings are embedded in the legal text.

In the sections that follow I review how Bills 60 and 22 manifest certain ways of conceiving labour relations: in narratives on the legitimacy of trade unions and collective bargaining, rights, the economy, and the role of government.

4. Narratives on the Legitimacy of Trade Unions and Collective Bargaining

Narratives on the legitimacy of collective organization and collective bargaining were especially prominent in trade union discourse on labour law. In its submissions to the LLRC labour identified unionisation and collective bargaining as important social objectives and urged the government to include a preamble modeled after that included in the federal *Labour Code*. The statements that preceded the text of both Bills 60 and 22, however, did not express the kind of affirmation for collective action that labour had demanded. Moreover, the preamble did not even acknowledge the role of trade unions in labour relations. Though the statements made repeated references to the "employee-employer" relationship there was no explicit mention made of trade unions even though the legislation (i.e., Bill 22) was to regulate relations between workers and unions and unions and employers. Bills 60 and 22 did not reflect a positive vision of collective action and the exclusion of any reference to trade unions suggested that there was no legitimate place for them.

In the early weeks of the Gainers strike trade unionists claimed that Gainers actions constituted "union busting". Labour linked Gainer's strategy to the *LRA* on the grounds that the latter had failed to prohibit the 25 hour lockout and to ban replacements. In labour's view, there was need for revisions that prohibited both of these practices. Neither of these issues were addressed as labour had demanded. As a result the problems highlighted in narratives on "union-busting" were not addressed and the narrative was without effect.

Labour also identified legal problems in narratives on "union recognition". Labour argued that events in the Mariposa case illustrated how employers could thwart workers' efforts to unionize. For labour, Mariposa signified the need for reforms that would expedite the certification process (e.g., automatic certification based on signed union cards), and that would deter employers from interfering in union organizing campaigns. Labour had also demanded first contract arbitration and provision for compulsory dues check-off on the grounds that such measures would facilitate union recognition. Labour's concerns were not taken up in the revised legislation. Neither Bill 60 nor Bill 22 provided for first contract arbitration or the compulsory dues check-off. Bill 22 also authorized the Board to direct employers to suspend payment of union dues where a strike was illegal—a measure that I linked to the 1988 nurses' strike. Both bills also called for mandatory representation votes, a measure that labour predicted would provide greater obstacles to union recognition. Bill 22 also rescinded the Alberta Labour Relations Board's (ALRB) authority to remedy employer unfair labour practices by automatically certifying bargaining units, a measure that the Board had resorted in the Mariposa case. Labour had called for the affirmation of this power on the grounds that this would render employers less inclined to interfere in organizing campaigns. Labour's concerns about union recognition went largely unheeded .

Narratives on union legitimacy were also taken up by the Official Opposition during debate on Bill 22. New Democrats (NDs) claimed that the mandatory representation vote and the withdrawal of the provision authorizing the ALRB to automatically certify bargaining units represented an attempt to "Americanize" Alberta labour law. American labour relations legislation was seen to have undercut the American labour movement because it had failed to deter anti-labour practices by employers. The adoption of the certification provisions, NDs claimed, represented a move toward the American model, and thus an attempt to undermine union density in Alberta. The NDs made a similar argument against a provision (s. 145(2)(c) in Bill 22) that affirmed the employer's ability to express his views during the union campaign. The Americanisation narrative was without effect and these provisions were retained in the final legislation.

5. Narratives on Rights

Rights were important themes in both employer and labour interpretations of law. Labour expressed concern about the protection of labour's "successor rights" (especially in relation to the spinoff provisions), the "right to organize" (e.g., the certification provisions) and the "right to picket" (e.g., secondary picketing). Among labour's chief concerns was the "right to strike." Unionists claimed that this right had been compromised by a number of practices, among them the employer's ability to hire a replacement workforce during a legal work stoppage. Labour claimed that the employer's ability to hire replacements undermined the effectiveness of the strike. On these grounds labour demanded a ban on their use. A ban on replacement labour meant something very different to employers; it was a threat to management rights. Employers insisted that they had "a right to continue business operations" during a strike and a "right to test their contract offer" in the market. Employers also contended that if the government banned replacement labour it would also be required to prevent employees from seeking alternate employment during a dispute. By taking such steps, though, the law would remain "balanced", but "individual rights" would be significantly compromised. No provisions in Bill 22 prevented employers from hiring replacement workers. Bill 22 even dropped the provision introduced in Bill 60 which banned the use of professional strikebreakers. Employers also criticized the revised minimum standards provisions presented in Bill 60. Employers contended that the revisions had expanded individual rights at the expense of management rights. In Bill 21 many of these "problems" were amended in the way that employers had suggested in their submissions. Narratives on management rights, therefore, proved to be influential in both Bills 21 and 22.

Employers also appealed to narratives on "democracy" to press for changes that would require a representation vote in all certification applications. Labour contested this view claiming that the democratic appeal of the vote was misleading and that such a measure threatened workers' rights to join a union and engage in collective bargaining. In both bills 60 and 22 representation votes were made mandatory. During debate on Bill 22 the Labour Minister appealed to broader narratives on "democracy" in support of the vote. NDs protested the change on the grounds that it was a threat to labour's rights. The mandatory representation vote was retained in the final version of Bill 22 and the interpretation offered by labour was once again suppressed.

During the final stages of the review process narratives on rights were used with some success by New Democrats to oppose provisions in Bill 22 that restricted support picketing and boycott activities. I have argued that the inclusion of limitations on picketing can be traced to an account of the 1986 Gainers dispute that attributed picket line violence to outside troublemakers. During Legislative debate on Bill 22 NDs opposed the restrictions in a narrative on "constitutional rights". NDs claimed that the restrictions on picketing and boycotts were in contravention of protections guaranteed by the Canadian *Charter of Rights and Freedoms* and were therefore unconstitutional. Initially the government tried to defend the provisions, but in the revised version of Bill 22[2] the provisions were amended. No longer limited to those with a "direct interest" in the dispute, picketing and boycott activities were permitted by "anyone" (s. 82(1)). In this provision, then, it is possible to see the influence of the broader societal narratives on constitutional rights. Several sub-clauses set out the conditions under which the ALRB could limit picketing. In making this decision the Board was at liberty to consider the "directness of the interest" of individuals and trade unions engaged in picketing (s. 82(3)(a)) and the "violence or likelihood of violence" (s. 82(3)(b)). These subsections retained traces of narratives on Gainers.

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[2] *Labour Relations Code*, S.A. 1988, c. L-1.2

6. Narratives on the Economy

The economy was an important narrative theme during the labour review initiative. "Competitiveness" was a common thread that ran throughout debate. During the Gainers dispute competitiveness in the job market was described as a new "economic reality" for striking Gainers workers. Later, as part of an effort to shift debate away from Gainers, Tory MLAs and LLRC documents made repeated references to the importance of viewing Alberta's labour law in relation to the competitive challenges that lay ahead. In their submissions to the LLRC, employers lauded the government's focus on the economy and reiterated the importance of fostering competitiveness. Traces of narratives on competitiveness were clearly evident in the government's first labour bill. Bill 60 introduced a preamble, something that had been recommended by labour to affirm collective bargaining, that highlighted the significance of the "competitive world-wide market economy". The same statements also appeared in Bills 22 and 21. During debate on Bill 22, the New Democrats claimed that references to competitiveness, while suited to economic legislation, were inappropriate for a labour relations statute. As part of its anti-economy narratives, the Official Opposition also claimed that the Bill's references to competitiveness meant that the government had drafted the Bill with free trade in mind. The explicit references to competitiveness, NDs claimed, belied the government's real intent to make Alberta's legislation compatible with that in the United States in anticipation of bilateral free trade. The final version of Bill 22 retained the preamble initially introduced in Bill 60. In doing so it had affirmed narratives on competitiveness, while suppressing anti-free trade narratives.

Narratives on the economy were manifest in the Bill 22 in other ways. Business had opposed many of the new provisions in Bill 60, particularly in Part II of the Bill which set out regulations governing minimum standards, in narratives on "costs" and "flexibility". Employers claimed that the provisions would increase costs and reduce employment flexibility, developments that they insisted would compromise Alberta's competitive position. To support this claim some employers appealed to existing narratives on free trade, noting that the elimination of trade barriers would make competitiveness an even more material concern.

Employer readings of Bill 60 seemed persuasive as many of the "offending" provisions in Bill 60 were subsequently altered or removed.

At the beginning of the labour law review process the government had drawn on narratives on the economy to refocus debate away from events at Gainers. The Tories noted the urgency of promoting an approach to labour relations that would allow the province to meet the competitive challenges of the future. Government officials began to promote mutual respect between labour and management, as well as communication and co-operation, as antidotes to adversarial labour relations and to labour unrest. The government also called for labour and employers to recognize their shared concern in the well-being of a business entity and to approach each other as partners, not as adversaries. These ideas played a critical role in shaping the provisions that appeared in Bills 60, 21 and 22.

Traces of narratives on reshaping the labour-management relation were apparent in the preamble. In the AFL's view the government's attempts to promote the idea of a "common interest in the success of the employing organization" was mere "rhetoric" because it masked the realities of the employment relationship (submission 226: 4). Workers and employers were not partners but unequal in a relationship in which the former were highly dependent upon the latter. Labour's proposals for fair, balanced legislation were based on the view that employers and workers were not equals. Labour proposed changes that it believed would protect workers from employers and that would improve labour's position vis-a-vis employers (e.g., the ban on replacement labour). The notion that labour relations should be more co-operative and less adversarial was also apparent in the communication and education provisions. Labour and employers were both suspicious about these clauses because they believed that they would significantly increase the government's role in labour relations

7. Narratives on the Role of Government

Narratives on the role of government were used by labour and employers to identify problems in the *LRA*, and in Bills 60 and 22. During the Gainers strike the Tories had appealed to narratives on "voluntarism" to avoid becoming directly involved in the dispute. Obtaining a settlement, it contended, was best left to the two parties. Later, during the labour review process the government claimed that Part III of Bill 60 on labour relations had increased the responsibility of the two parties and had thereby restrained the government's role in labour relations (Alberta Labour: 1987: 3). The idea that the legislation promoted voluntarism was not a view that labour or employers shared. Both constituencies, for instance, claimed that the communication and education provisions contained in Part 1 of Bill 60 were too "interventionist". This narrative was also used to identify problems with collective bargaining procedures (e.g., the exchange of written proposals) and procedures governing the role of third parties in dispute resolution (mediation). Bill 22 appeared to address a number of these concerns. The communication and education provisions dropped Bill 60's section 9, one of most interventionist sections that authorized Cabinet to direct the parties to participate in structures and procedures for consultation and communication.

Narratives on the role of government were also used in the context of the 1988 nurses' dispute to attack specific provisions in the *LRA*. Labour and others claimed that the mandatory interest arbitration provisions, which required arbitrators to consider government fiscal policy when issuing their awards, amounted to undue "government intervention". This prompted demands for fairer arbitration procedures and for the repeal of the strike ban on hospital employees. In Bill 22 the Tories responded to these concerns by relaxing the restrictions governing arbitrators' awards. Other changes in Bill 22 were identified in narratives the expansion of government powers. New provisions allowed the government to *direct* employers to suspend the dues check-off (s. 111) and to revoke the certificate of a union where that bargaining agent had engaged in illegal strike action (s. 113). Labour and the New Democrats presented the new measures as an autocratic response to the nurses' strike, and as a means for the government to grant itself absolute, "totalitarian" powers during illegal strikes (Roberts quoted in *AH*, June 23, 1988: 2004). Narratives on excessive government flowed in to narratives on democracy: with suggestion that the new provisions were "anti-democratic". Despite these representations sections 111 and 113 were retained in the final draft of Bill 22.

8. Summary

This study provides insights into narrative and how narrative works. I have shown how legal provisions take on various meanings in different narrative accounts. The possibility of a provision banning replacement labour, for instance, acquired meaning in narratives on labour's rights (the right to collective bargaining and to strike), narratives on management rights, and in narratives on the economy (e.g., flexibility). The narratives that I have identified in this study are closely related. For analytical purposes, however, I have identified discrete narrative themes that ran throughout discourse on the labour review. The themes do intersect in a web-like fashion. Narratives on the economy intersect with those on the rights when, for example, employers and their associations spoke about their "right" to test their contract offer in "the market." Rights are also closely connected to understandings of trade union legitimacy.

Narratives can also be organized into hierarchies. It is possible to present them in terms of the sphere at which they operate. Some may circulate at the local level, while others exist at a more general, societal level. Local narratives would include specific accounts offered by participants and observers of the 1986 Gainers strike or the 1988 nurses' dispute. Local narratives were critical in problematizing specific aspects of the *LRA*, and in forcing legal change on to the government's legislative agenda. Problems identified in these narratives also flowed into more general narratives, such as those on rights and the role of government. At various points participants also appealed to broader, societal narratives such as those on free trade with the United States, democracy and the rule of law.

One might also argue that within discourse on industrial relations there is a hierarchy of narratives for labour, employers and the government. For employers economic considerations, such as "competitiveness" appear to be the primary concern, followed by the protection of "management rights". The "right to organize", to "bargain collectively" and "to strike", within the broader framework of "legitimacy for trade unions and collective bargaining, were of primary interest to organized labour. The government, meanwhile, spoke about the importance of providing "fair" legislation that also protected the "public interest". Of more significance were conflict avoidance and the compatability of labour relations with the economy. As the study shows, the narratives were fluid, meaning that they were not restricted to one constituency or another. Labour, for instance, appealed to narratives on the economy (free trade), while employers invoked narratives on the public interest to argue for change. Their respective agendas, however, meant that generally they relied on certain narratives more than others.

In this dissertation I have used narrative to illustrate how labour law can take on various meanings at a given moment in time and how a law comes to be viewed as problematic. I have shown how the Gainers dispute, specifically an interpretation of the strike that linked events on the picket lines to omissions in the *LRA*, was critical in the problematization of the *LRA* in mid-1986. I have also shown how legal problems identified in narratives on Gainers and later in more general narratives on labour law: the legitimacy of trade unions and collective bargaining; the role of government; rights; and the economy. In addition to identifying problems in labour legislation, narrative also helps us understand how specific demands for change are formulated

In this dissertationI have also tried to show how labour legislation that was drafted in Alberta in 1987 and 1988 gave expression to some narratives—such as the importance of promoting more consensual labour relations—but not to others. The analysis indicates that the legislation was not shaped by a single agenda, but by a number of influences. Narratives adopted by labour and the New Democrats seemed to have the least effect, but it is still possible to see instances of their influence in Bills 60 and 22. Employer and government narratives were more influential. By viewing legislation in the context in which it was drafted and debated, it is possible to see the range of proposals for change that were formulated and the social visions on which they were based. In this way it is possible not only to grasp the meaning of the legislation at specific moments and places in time, but also to acknowledge how some views of labour relations prevailed over others in the legal text. This I believe is one of the strengths of post-structural theory and narrative analysis.

I also highlight the strengths of narrative in the next section. Here I consider the theoretical approaches that I outlined in chapter two: functionalism; pluralism; and Marxism. Drawing on insights from the Alberta case I also show how narrative adds to the theoretical insights offered by these theories.

9. Alternate Theoretical Accounts

a. Structural Functionalism

Viewed from the functionalist frame of reference, the problematization of the LRA in 1986 would likely be linked to a breakdown in the normative, such as an incongruity in "behavioural expectations" during the Gainers dispute. While this is plausible, functionalism's ability to account for specific revisions, such as those that appeared in the *Labour Relations Code* in 1988, is limited. The view that legal content is an elaboration of shared values has been questioned in social research and is not supported by this study (See Cotterrell, 1984). The documents that I examined revealed that revisions proposed in Bill 60 and Bill 22 did not embody a unity of values. Employers and trade unions believed that labour law should realize quite different objectives. Trade unions, for instance, believed that the law should protect workers' rights while employers contended that it should guarantee certain management rights and not disrupt the economy.

There is an argument that value consensus can only be realised at a high level of abstraction that has little bearing on the specifics of legal content (Tomasic, 1980). In labour relations, trade unions, management and government may all agree that acquiring "balance" in labour law is an important goal. Each, however, may present different ideas on how this can be achieved in practice. Though there has been some recognition in functionalist analysis that law may be interpreted in different ways by different constituencies[3], the complexity of meaning and interpretation has not been a central problematic. In contrast, meaning lies at the centre of narrative analysis.

The method typical of functionalist research also prevents a fuller understanding of legal change. In functionalist theory, the reliance on highly abstract concepts means that the social complexity that shapes legal meaning and gives rise to specific demands for change is lost. Functionalism's reliance on nomothetic research methods also means that the details of the individual case get stripped away and the social contexts that help us to understand the nuances of legal change are ignored. Narrative analysis, however, recognizes the importance of socio-historical context and the significance of particularities (e.g., unique, unrepeatable events) in legal change.

b. Pluralism

For the pluralist legal change would coincide with shifts in the relative power of competing social groups. As one group or alliance gained an advantage over another the existing law would no longer reflect the dominant interests.[4] As a result the law would need to be rewritten to ensure that its provisions were consonant with the new dominant interests. In pluralist analysis the problematization of the *LRA* in 1986 would be presented in terms of groups and interests. The Conservative government's promise to review Alberta's labour laws would be seen as a response to the labour movement's increase in sphere of influence and its ability to press for changes that were in keeping with its interests. The inability of labour to win the changes that it had demanded during the Gainers dispute would be viewed in terms of labour's spent power and its inability to shape the government's political agenda.

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[3]. Podgorecki (1974), for example, contends that interpretations of the law are shaped by one's social position.

[4]. In pluralist theory the state assumes either a neutral role — ratifying dominant interests — or a more active position, whereby it helps the parties negotiate a compromise. Either way, in pluralist theory it is the state's primary obligation to respond to the demands of dominant groups (Grindle and Thomas, 1991). In 1986 Alberta labour had mobilized strong support for specific legal reforms to the LRA. These demands were not taken up in government legislation but were actively opposed by the government. When New Democrats presented legislation (Bill 206) that embodied labour's demands for change, the Tories mounted a vigorous campaign against it. The government could not be characterized as simply responding to external pressures. With its plans for improved communication and education, for example, the government appeared to be pursuing an agenda of its own.

My analysis suggests that the relative influence of employers and unions played a critical role in the direction of legal change in Alberta. During the Gainers dispute, organized labour had been able to broaden support for labour law reforms as was evidenced in public demonstrations and the AFL's "change the law" lawn sign campaign. The Alberta Tories responded to these conditions with a promise to review provincial labour law. A year later, however, labour's influence had diminished. The Gainers strike was settled, and labour law was no longer a pressing public issue. It is also in 1987—following the introduction of Bill 60—that Alberta employers began to mobilize around the issue of labour law. Employers opposed the proposed legislation and demanded changes. Under strong pressure from employers, the Tories responded by revising many of the clauses in question.

Pluralist analysis is useful because it draws our attention to the question of why certain changes were introduced. It is limited, though, because it tells us little about the way that problem clauses in legislation are identified and the way that proposals for change are formulated. In other words though it can tell us why the government may select some provisions over others (e.g., those presented by labour or management) it has difficulty accounting for the range of proposals that are under consideration at a particular time.

In their accounts of law-making pluralists fall back on the concept of "interests" which are not theorized but treated as self-evident. Interests are believed to emanate from one's membership in a particular group. As a result apprehending group interests and translating them into legal proposals is treated largely as an unproblematic process. Hindess (1986: 119), however, contends that interests are the product of assessment.

> Interests depend on forms of assessment: if they are to provide potential reasons for action it must be possible to present them as the outcome of some process of assessment ('this strike is in the interests of miners because...'). What is involved here is the construction of an *account* of the actors' *situation* and of how they might be affected by particular changes or actions (emphasis added).

This points to the importance of context in constructing interests which in turn suggests that interests are not fixed or determined but contingent and constructed.

There appears to be important narrative elements in the way that we assess interests. We relate how a certain course of action will be of benefit to us in stories. In 1986, for example, the AFL noted that though there was widespread concern that the Tories' review process was a "sham" (because of the view that decisions about the law had already been taken) it would take the government's review seriously and was, as a result, urging its affiliates to submit their views to the LLRC (AFL, 1986: 2). In short the AFL believed such activity to be in its interests. When the Minister of Labour requested public input on Bill 60 in mid-1987, the AFL urged its affiliates not to respond to the Minister's request. In this instance a letter writing campaign was judged not to be in labour's interests on the grounds that the government had not acted on labour's earlier submissions. These examples illustrate how interests are contingent on the way that specific events and contextual details are fashioned into narrative accounts. In the second narrative, the AFL did not recommend responding to the Minister because Bill 60 had been introduced (a new event) and had failed to address labour's major concerns about the *LRA* (contextual detail). This illustrates that interests are not entities that transcend time and space but that they are context sensitive. Narrative provides a way of understanding how group interests are constructed and reconstructed and in doing so offers a more theoretically refined way of understanding how legislation is problematized and how legal proposals are formulated.

c. Marxist Theory

While pluralists present the law in terms of group interests, Marxists see legal content as an expression of class interests. In class instrumental versions of Marxism the law is simply a manifestation of the capitalist class' economic power. Capitalists use the state as an instrument to enact legislation that reflects its own interests. In structural Marxist analysis the state does always draft legislation that reflects capital's interests. In periods of crisis the state may act in ways that appear contrary to the interests of capital. In drafting labour law, for example, the state may make significant concessions to organized labour. Labour legislation presented in the Alberta Legislature between 1986-1988 government made few concessions to labour. In 1986, however, Alberta's pro-business government did respond to organized labour's demands for labour law reforms. This was significant because it launched the review undertaking. The government had at first resisted labour's demands but in the midst of considerable labour and social unrest, and growing support for labour's cause, the government made a decision to review the operation of Alberta's labour laws.

In structural Marxist analysis the state is able to pursue changes that are incompatible with capital's interests because of the relative autonomy of the state, a concept that I have used at various points throughout this dissertation. This concept is helpful in understanding the role of the government in the Alberta labour review. The Tories played a very pro-active role in framing the review initiative and in setting an agenda for the LLRC to pursue. The study shows that many of the revisions contained in Bill 60 could be traced to the government's vision of how labour relations should be conducted. I have argued, for example, that the inclusion of the communication and education provisions were based on the government's agenda. Though employers did not reject the agenda per se, they did object to the way that the government had translated this into legal provisions. As a result employers mounted a strong lobbying campaign againt Bill 60 and many of the objectionable provisions were revised. Bills 21 and 22 did not address all of the problems that employers had identified, perhaps for the sake of its own legitimacy.

In structural Marxism there is also an assumption that legal doctrine develops in a particular way out of functional necessity for the long-term interests of the capitalist system. The idea that the law will somehow ensure that the needs of the mode of production are met is problematic. It suggests that legal developments are somehow inevitable and pre-given. Yet as Gordon (1990) notes, this argument begins to crumble when we see the content of law as contingent. He writes:

> When it is asserted that strict predictable rules of private property and free contract are necessary to protect the functioning of the market, maintain production incentives, etc, it can be shown that the actual rules are not at all what they are claimed to be, that they can be applied differently in quite different circumstances...no given economic order can be thought of as requiring for its maintenance any particular bunch of legal rules, except of course those that may be part of the *definition* of that economic order (1990: 420-421).

Narrative analysis provides a way of exploring the contingent dimension of legal development.

Narrative provides insights into law-making that are overlooked in Marxist analysis because it draws attention to the way that texts are interpreted. In terms of the changes that were proposed in Bill 22 a Marxist would probably conclude that the revisions were, for the most part, beneficial to employers. This conclusion is itself problematic. How would a Marxist "know" that a particular clause was pro-employer or pro-labour? How would he/she recognize that a mandatory representation vote was pro-employer and that the certification through signed union cards was beneficial to labour? These details are not intrinsic to legal statements themselves. These are conclusions about the law that flow from meanings that become attached to legal provisions. In debate on certification employers and labour had offered competing narrative accounts of what the adoption of mandatory representation votes would mean. Labour, for instance, appealed to a stock of knowledge that linked representation votes to lower union density rates. Viewed in relation to narratives it becomes possible to understand how legal statements take on specific meanings.

Narrative analysis provides a way of understanding how legal meanings are produced, a matter that is not given adequate attention in functionalist, pluralist and Marxist analyses of law. Narrative provides a way of grasping how specific legal clauses are judged to be problematic (or in some instances not problematic) and how parameters are established for the construction of legal proposals that are considered reasonable at a given moment. This then fosters an understanding of how revisions to labour law take the specific form that they do—the central aim of this dissertation. Though a necessary element in understanding legal change, narrative alone is not sufficient. For instance, how is it that some narratives are influential at certain moments and less so at others? Pluralist and Marxist theories would, as I have noted earlier, attribute this to power. I will provide some additional thoughts on power in the following section

d. Narrative and Power

Narratives are not isolated from power. Power is manifest in the way that narrative accounts are constructed. As Riessman (1993: 65) notes narratives are "not innocent" but have "hidden agendas in them that shape what gets excluded and included...". What gets highlighted and what gets left out of narratives then constrains meaning. In its accounts of the labour review, for example, the Tories avoided any references to the 1986 Gainers dispute. This omission was not coincidental. The government did not want to debate labour law in terms of Gainers or any of the other on-going strikes because labour had used these events so successfully to push for specific, pro-labour reforms. The government's strategy was to highlight other matters, such as the exigencies of the economy. A similar strategy was taken up by LLRC. Attempts to define, to represent and to create meaning in narratives are not neutral, but politically charged activities. Viewing narrative in this way it is also possible to see how power is infused in discourse on law and exercised throughout the legal review initiative.

To understand the process of legal change it is also necessary to acknowledge other manifestations of power. The ability of the Tories to control the timing of certain developments, for example, was an important dimension of the process. First the government was able to delay launching the review. Further delays were built into the process with the appointment of the LLRC and its overseas fact-finding mission. The LLRC did not issue recommendations for change until February, 1987, by which time the strike at Gainers had been settled and organized labour's strength had diminished considerably. By the time that the revised legislation was introduced— first in 1987 (Bill 60) and then in 1988 (Bills 21 and 22)— events at Gainers and the legal debate that had ensued had faded from Albertans' memories. In short, delays had effectively undermined the momentum behind organized labour's campaign for reform.

In the latter stages of the review process the Tories were also able to direct Bills 21 and 22 through the legislative process. The NDs made a concerted effort to delay and block the legislation by sponsoring a number of amendments and motions. During debate the NDs attacked the Bills in a number of narratives, but the Tories were still able to push the Bills through the process by repeatedly invoking closure. The Opposition tried to discredit the government's means by appealing to broader narratives on democracy: presenting the invokation of the procedural measures as anti-democratic. Such efforts were without effect, however and Bills 21 and 22 became law.

My analysis of the Alberta labour law review also reveals the significance of lobbying, an insight that is offered in both Marxist and pluralist analyses of law. By adopting an intepretive approach I am also able to show how various parties knew what to lobby the government for. Narrative accounts for the way that problems in the law are identified and then how proposals for change are formulated. It allows us to understand how a group/class came to pursue a particular agenda. Lobbying plays a significant role in understanding which proposals (and social visions) are privileged in legislation and which proposals and visions are suppressed. Narratives intersect with lobbying efforts and together help us to understand how specific changes appear in a given context and moment in time.

D. Suggestions for Further Research

In this dissertation I have identified the influences that shaped the revised provisions that appeared in the *Labour Relations Code* in 1988.

The study's sharp focus on understanding how legal change occurs has meant that other considerations, such as the impact of the revisions, have been pushed aside. It has been almost a decade now since the conclusion of the 1986-88 Alberta labour review so others with an interest in labour law may wish to assess the material consequences of the 1988 *Code*. This might involve an examination of the revised certification procedures (especially the mandatory representation vote) and unfair labour practice provisions (such as clauses affirming the employer's ability to communicate with employees) to see whether they have proven to be the obstacles to union organizing that labour and the NDs had envisaged.

This study points to the importance of social context in understanding legal change. Attention to the socio-historical conditions at specific moments in time makes it is possible to see the mixture of influences that shape legal doctrine. It becomes possible to see how some visions of labour relations are affirmed in the legal text while others remain out of view. Assuming that archival material is available, similar studies of labour relations law in other Canadian or foreign jurisdictions at similar or different time points would be worthwhile. In other jurisdictions we might expect there to be different confluences of ideas reflecting local and regional conditions. The association of things like political circumstances and industrial relations events clearly are crucial in the articulation of labour law. So we would find that different streams of events in different jurisdictions with different histories during different moments would lead to alternate ways of understanding labour law. This is not to say that the confluence of politics and industrial relations issues would be looked at in an entirely different way, but there may be different nuances, different events, and different circumstances that provide fresh insights into these broader social interactions.

For comparative purposes it would be useful to explore influences that shaped the provisions that appeared in British Columbia's Bill 19—the *Industrial Relations Reform Act*—which was introduced around the same time as Alberta's Bill 60 in 1987.[5] One might consider how B.C. labour law derived meaning in relation to specific understandings of the economy (e.g. the economic impact of strikes, competitiveness and free trade) and to what extent these ideas were manifest in Bill 19. It also would be interesting to explore how structural factors, such as BC's more militant trade unions, influenced discourse on labour law and the contents of the revised legislation. Another interesting exercise would be to consider how labour reform might be pursued at the federal level in the United States. One might expect debate to bring into focus different legal problems, especially given the prevalence of anti-union narratives that have been used to support "right to work" legislation. The political conditions, such as the balance of power in the U.S. House and Senate and the absence of a third, social democratic party to take up organized labour's concerns would have a significant impact on the direction of debate and legal change. I believe that such studies would add to our understanding of legal change.

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[5] A labour review was commissioned in British Columbia by Premier Bill Vander Zalm in December, 1987. The review was established in response to a five month strike by BC members of the International Woodworkers of America (*Alberta Report*, January 12, 1987: 4). Bill 19 was introduced in May, 1987.

I would urge social and legal researchers to approach their studies with a greater sensitivity to narrative. In this study narrative served as an important analytical tool for understanding how the law comes to signify in a particular way, how meanings are contested and how proposals for change are generated. Context is critical in understanding meaning. In much sociological research, however, social phenomena are extracted from their socio-historical context (See Mischler, 1986). There has been a strong tendency to distrust the discursive and to reduce narrative accounts to a non-discursive form in the name of scientific rigor. This has involved the quantification of social phenomena through such means as the administration of scales. The meaning of this "data" is not immediately present; it does not simply inhere in numbers and statistics that result from technical procedures but must be re-interpreted and fashioned into narrative accounts (Gephart, 1988; Richardson, 1990). These and other narrative elements of social research are ignored. It is my hope that this and similar studies bring an increased awareness of the significance of narrative and narrative structures in understanding.

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